The Library of Congress'

EARLY STATE RECORDS PROJECT

converted from the original microfilm held by the
Vincent C. Immel Law Library, Saint Louis University

through the generous support of a grant from the

Council on Library and Information Resources

Wisconsin. Laws, statutes, etc.

927
Lil. Cong

THE

REVISED STATUTES

OF THE

STATE OF WISCONSIN,

PASSED AT THE SECOND SESSION OF THE LEGISLATURE, COMMENCING JANUARY 10, 1849:

TO WHICH ARE PREFIXED

THE DECLARATION OF INDEPENDENCE, AND THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF WISCONSIN;

With an Appendix,

CONTAINING CERTAIN ACTS REQUIRED TO BE PUBLISHED THEREWITH.

LIBRARY OF CONGRESS
LAW
DEPARTMENT.
CITY of WASHINGTON

Printed and published pursuant to law, under the Superintendence of one of the Revisers.

SOUTHPORT:
C. LATHAM SHOLES, PUBLISHER.
• • • •
1849.

CHARLES VAN BENTHUYSEN,
PRINTER, ALBANY, N. Y.

ADVERTISEMENT.

In July, 1848, the legislature of Wisconsin elected M. Frank, Charles S. Jordan and A. W. Randall, commissioners to collate and revise all the public acts of the state of a general and permanent nature, in force at the close of the session, and directed by law the manner in which the work should be completed, and that the acts so revised should be reported at the next session of the legislature. The last named person declining to act, the subscriber was appointed by the governor in his stead.

In August following, the commissioners commenced their labors, and were engaged in the revision the greater part of the time, until the close of the next session of the legislature which met in January, being nearly seven months. The work of revision, owing to the confusion of the laws, and the changes and new provisions which were required by the constitution then just adopted, was found so great, that the commissioners early foresaw it would be impossible for them to revise and report the entire body of the statutes within the time contemplated by the act authorizing their appointment. They therefore commenced with that part of the work which relates to the civil polity and internal administration of the state, as that required an immediate revision, and progressed with the laws in the order in which they appeared from their importance and the necessity of a revision to claim their consideration. They were enabled to revise and report to the legislature at its session commencing in January, 1849, sixty-four chapters, comprising the first fifty-four, with the exception of the twenty-first, twenty-second, twenty-third, twenty-seventh, twenty-ninth, thirtieth and thirty-fourth chapters, and from the thirty-ninth to the forty-fifth chapters inclusive ; also comprising the four chapters on the Domestic Relations, and several chapters in subsequent parts of the Revised Statutes.

All the chapters reported by the commissioners, with the exception of a very few of minor importance, were adopted by the legislature, generally without any, or with but slight amendment ; and the subscriber for himself, feels it but due to express his thanks for the candor and courtesy with which the members of the legislature uniformly received and acted upon the reports of the commissioners.

The commissioners in their first report to the legislature, stated the manner in which they were conducting the revision and the progress they had made therein. In February a joint committee of the two houses consisting of nine, was appointed, to inquire into and ascertain what business it was necessary to act upon during the session, and to report the most feasible plan of bringing the same before the legislature. This committee addressed a note to the commissioners, requesting their opinion as to the course they deemed best for the legislature to adopt in the revision of the laws. In their reply, the commissioners stated, that before the close of the session they would be able to report most of the laws which required an immediate revision, and suggested three plans, either of which might without impropriety, be pursued, but under all the circumstances, recommended that the legislature should act upon such chapters as the commissioners would be enabled to report during the session, comprising all that it was necessary should be immediately revised, and that the remainder of the laws should be compiled and published in a volume with the revised chapters. The committee in their report, were pleased to approve the manner in which the revision had been conducted and the progress made therein, and unanimously concurred in the plan recommended by the commissioners, and reported among others, a resolution that the revision and compilation of the laws be completed at that session, which was adopted by the legislature.

A joint select committee of the two houses was thereupon appointed, to compile and report such laws as the commissioners should be unable to revise and report during the session. A conference was had by this committee and the commissioners, and the work divided between them; the latter continuing the revision in the same manner they had previously pursued and recommended, and the former compiling those laws which the commissioners reported they would not be able to consider. Each pursued their labors separately, and owing to the limited time they had in which to accomplish them, it was impossible to review together the chapters they severally had under consideration previous to reporting. In order also to dispatch the great amount of business the committee had in charge, it was necessary as to part of their work, to distribute it to sub-committees, whose labors could not always be examined by the whole committee. A few bills of a general nature were also introduced by individual members of the legislature, which were not reviewed, either by the committee or the commissioners, and were enacted and form a portion of the Revised Statutes.

These circumstances, which were unavoidable from the amount of labor to be performed in a short period, are to be regretted, as they have occasioned some repetition and conflict of provisions which appear in the Statutes, that an entire revision by a single committee acting together, would have prevented. But the errors which have occurred, are less numerous and important than could reasonably have been expected, and it is believed that but little inconvenience will be occasioned thereby, and even this can be easily remedied by suitable amendments.

The law authorizing the publication of the Revised Statutes, directed the subscriber to arrange the chapters into parts and titles as he thought proper, re-arranging the order of the sections or transposing them from one chapter to another, whenever it would not alter the meaning of the law, and the proper order of arrangement required it. In performing this branch of his duties, he has found it necessary in some parts of the work to unite or divide chapters and distribute them into sub-divisions, and frequently to re-arrange and transpose the sections, but always with due regard to the connection and similarity of the subject, and without altering the sense of the text. He has endeavored to arrange the entire work in a natural and systematic order, and so that those provisions which pertain to the same subject should be found together in one place. This has added considerably to his other labors, and he hopes it may not prove useless.

The corrections of clerical mistakes in the enrolled acts, which by law he was authorized to make in the printed text, will be found noted at the end of the volume. Such only have been made as were evidently required to complete the sense, and express the intention of the legislature.

The subscriber has endeavored to make the marginal notes and index as full and correct, as his other duties connected with the publication, and the limited time at his command would permit. Could he have bestowed more attention to this part of the work, he would have made it more satisfactory to himself, and probably more acceptable to the public. In the pressure of business, some errors doubtless have occurred in this portion of his labors, but none, he thinks, of importance, whilst the body of the work, he believes, will be found to be correct.

CHARLES M. BAKER.

September, 1849.

STATE OF WISCONSIN, ss.—I certify, that I have caused to be correctly copied all the chapters composing the Revised Statutes of the State of Wisconsin, passed at the session of the legislature thereof, commencing on the tenth day of January, A. D., 1849, also, all other laws required to be published therewith; that I have this day delivered the same to Charles M Baker, the commissioner appointed to superintend the publication thereof, and that the said chapters and laws so delivered to the said commissioner, are true copies of the originals deposited in my office.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State of Wisconsin.

[Seal] } Done at Madison, this 26th day of April, A D 1849.

THOS. McHUGH, Secretary of State.

Pursuant to an act providing for the publication of the Revised Statutes of the State of Wisconsin, I the undersigned, do certify, that the chapters composing the Revised Statutes and other laws purporting to have been passed by the legislature of said state, contained in this volume, are correctly published therein, from the certified copies thereof delivered to me by Thomas McHugh, Secretary of State, as mentioned in the foregoing certificate, with the exception of such corrections of clerical mistakes as were authorized by law to be made, and are noted at the end of this volume.

CHARLES M. BAKER.

September, 1849.

ANALYSIS

OF THE SEVERAL PARTS, TITLES AND CHAPTERS EMBRACED IN THE REVISED STATUTES, AND OTHER STATUTORY PROVISIONS AND MATTERS OF A GENERAL NATURE PUBLISHED THEREWITH.

Page.
Declaration of Independence, 1
Constitution of the United States, 5
Constitution of the State of Wisconsin, 19

PART I.

Of the Boundaries and jurisdiction, Divisions, civil Polity, and Internal Administration of the State.

TITLE I.

Of the boundaries, sovereignty and jurisdiction of the State, of its civil divisions, and the statutes.

Chapter 1. Of the boundaries, sovereignty and jurisdiction of the state, 50
2. Of the division of the state into counties, and their boundaries, 50
3. Of congressional districts, 58
4. Of the construction of statutes, 58
5. Of the publication and distribution of statutes, 61

TITLE II.

Of elections other than for town officers.

Chapter 6. Of general and special elections, of the manner of conducting the same, and of the canvass, 63
7. Of the election of representatives in congress, electors of president and vice president, and senators in congress, 77

TITLE III.

Of the Legislature; of State officers; of counties and county officers; of resignations, vacancies, removals and supplying vacancies.

Chapter 8. Of the Legislature, 79
9. Of State officers, 80
10. Of counties and county officers, 92

CHAPTER 11. Of resignations, vacancies and removals, and of supplying vacancies, - - - - - - - 114

TITLE IV.

Of Towns and town officers; of penalties for violating election laws; and of fences and pounds.

CHAPTER 12. Of towns and town officers, - - - - - 118
13. Of penalties for violating election laws, - - 131
14. Of fences and fence viewers; of pounds and the impounding of cattle, - - - - - - 133

TITLE V.

CHAPTER 15. Of the assessment and collection of taxes, - - 138

TITLE VI.

Of highways and bridges; and of ferries.

CHAPTER 16. Of highways and bridges, - - - - - 167
17. Of the regulation of ferries, - - - - - 184

TITLE VII.

Of public instruction, and the distribution of the income of school fund.

CHAPTER 18. Of the University of Wisconsin, - - - 186
19. Of common schools, - - - - - - 188
20. Of the distribution of the income of the school fund, - 205

TITLE VIII.

Of the public printing; of the public property; and of the School and University lands.

CHAPTER 21. Of the public printing, - - - - - 207
22. Of the publication of legal decisions, - - - 209
23. Of the management of the public property, - - 210
24. Of the school and University lands, the sale and superindence thereof, of the investment of the funds arising therefrom, and the powers and duties of the commissioners of said lands, - - - - - 210

TITLE IX.

CHAPTER 25. Of the formation of uniform companies, - - 227

TITLE X.

Of the public health.

CHAPTER 26. Of the preservation of the public health, - - 229
27. Of medical societies, - - - - - - 231

TITLE XI.

Of the internal police of the state.

Chapter 28. Of the relief and support of the poor, - - 235
29. Of the sale of spirituous liquors, - . - 242
30. Of the sale of intoxicating liquors to Indians, - - 243
31. Of the support of bastards, - - - - 244
32. Of public shows and exhibitions, - - - 247
33. Of the law of the road, and the regulation of public carriages, - - - - - - - 247
34. Of navigable rivers, - - - - - - 248
35. Of timber and lumber floating upon waters, or carried upon adjoining lands, - - - - - - 249
36. Of strays, and lost money and goods, - - - 249
37. Of the disposition of unclaimed property, - - 252
38. Of marks and brands, and filing chattel mortgages, - 254
39. Of unathorized banking, - - - - 255
40. Of the protection of hedges, fences, fruit and ornamental trees, &c., - - - - - - - 256
41. Of recording town plots, - - - - 257

TITLE XII.

Of the regulation of trade in certain cases.

Chapter 42. Of weights and measures, - - - - - 260
43. Of the rates of toll for grinding, - - - 262
44. Of bills of exchange and promissory notes, - - 262
45. Of the interest of money, - - - - - 264
46. Of the money of account, - - - - - 264

TITLE XIII.

Of corporations.

Chapter 47. Of religious societies, - - - - - - 265
48. Of cemetery associations, - - - - - 269
49. Of libraries and lyceums, - - - - - 272
50. Of the incorporation of plank and turnpike road companies, 273
51. Of corporations for manufacturing, mining, lumbering, agricultural, mechanical and chemical purposes, - 286
52. Of the incorporation of villages, - - - - 290
53. Of electric telegraph lines, - - - - 306
54. general provisions relating to corporations, - - 307

TITLE XIV.

Chapter 55. Of Seals, - - - - - - - 311

PART II.

Of Real Property, of the acquisition, the enjoyment and transmission of Property, real and personal, the Domestic Relations, and other matters connected with Private Rights.

TITLE XV.

Of real property, and of the nature, qualities and alienation of estates therein.

Chapter 56. Of the nature and qualities of estates in real property, and the alienation thereof, - - - - - 313
57. Of uses and trusts, - - - - - - 318
58. Of powers, - - - - - - - 321
59. Of alienation by deed, of the proof and recording of conveyances, and the canceling of mortgages, - - 326
60. Of recording contracts relating to land, - - 331
61. Of the appointment of commissioners to take the acknowledgment of deeds, &c., in other states, - - 332
62. Of estates in dower, by the curtesy, and general provisions concerning real estate, - - - - - 333

TITLE XVI.

Chapter 63. Of title to real property by descent, - - - 338

TITLE XVII.

Of title to real estate by special provisions of law.

Chapter 64. Of the sale of lands of minors and other persons under guardianship, and securing the proceeds for their use, 341
65. Of the sale of lands for the payment of debts, by executors, administrators and guardians, - - - 344

TITLE XVIII.

Chapter 66. Of wills of real and personal estate, - - - 353

TITLE XIX.

Of the settlement of estates of deceased persons.

Chapter 67. Of letters testamentary and other proceedings on the probate of a will, - - - - - - - 360
68. Of the administration and distribution of the estates of intestates, - - - - - - - 362
69. Of the inventory and collection of the effects of deceased persons, - - - - - - - 366
70. Of the payment of debts and legacies of deceased persons, 369
71. Of rendering accounts by executors and administrators, 378
72. Of the partition and distribution of estates, - - 380
73. Of probate bonds and the prosecution of them, - 383
74. Of the conveyance of real estate by executors and administrators in certain cases, - - - - 385

TITLE XX.

Of fraudulent conveyances and contracts relative to real and personal property.

CHAPTER 75. Of fraudulent conveyances and contracts relative to lands, 387
76. Of fraudulent conveyances and contracts relative to goods, chattels and things in action, - - - - 388
77. General provisions relating to fraudulent conveyances and contracts, - - - - - - - 390

TITLE XXI.

Of the domestic relations.

CHAPTER 78. Of marriage, - - - - - - - 391
79. Of divorce, - - - - - - - 393
80. Of guardians and wards, - - - - - 398
81. Of masters and apprentices, - - - - - 404

PART III.

OF COURTS AND JUDICIAL OFFICERS, OF SUITS AND PROCEEDINGS IN CIVIL CASES, AND OF COSTS AND FEES.

TITLE XXII.

Of courts and judicial officers.

CHAPTER 82. Of the supreme court, - - - - - 409
83. Of the circuit courts, - - - - - - 411
84. Of courts of chancery and proceedings therein, - 413
85. Of probate courts, - - - - - - 428
86. Of county courts, - - - - - - 433
87. General provisions concerning courts of record, of the powers and duties of judges, and of attorneys and officers of court, - - - - - - - 438
88. Of courts held by justices of the peace, - - 442
89. Of the jurisdiction of justices in criminal cases, and of the proceedings therein, - - - - - 484

TITLE XXIII.

Of proceedings in personal actions.

CHAPTER 90. Of process, of the commencement of suits, and the service and return of writs, - - - - - 493
91. Of bail in civil actions, and proceedings connected therewith, - - - - - - - 498
92. Of filing security for costs, - - - - - 501
93. Of tender, of pleadings, and of proceedings on bills of exchange and promissory notes, - - - - 502
94. Of set-offs, - - - - - - - 505
95. Of change of venue, and of referring and consolidating causes, 507
96. Of the survival of actions, and of death, marriage, or other disability occurring after the commencement of the suit, 508

Chapter 97. Of grand and petit jurors, - - - - - 510
98. Of evidence, - - - - - - 516
99. Of administering oaths, - - - - - 529
100. Of amendments and proceedings thereupon, - 530
101. Of default, and of the assessment of damages, - 533
102. Of judgments and executions, of the exemption of property therefrom and the sale thereon, and of the redemption of lands, &c., - - - - - - 534
103. Of suits and proceeding by and against executors and administrators, and against the next of kin, heirs, legatees, and devisees in certain cases, - - 551
104. Of writs of error and proceedings thereon, and of bills of exception, - - - - - - 559
105. Of miscellaneous proceedings, - - - 560

TITLE XXIV.

Of suits relating to real property.

Chapter 106. Of the action of ejectment, - - - 562
107. Of improvements on real estate, - - - 569
108. Of the partition of lands owned by several persons, 570
109. Of waste, - - - - - - 581
110. Of actions for private nuisances, - - - 583
111. General provisions concerning actions relating to real estate, - - - - - 584

TITLE XXV.

Of proceedings in special cases.

Chapter 112. Of proceedings against debtors by attachment, - 587
113. Of proceedings by and against corporations in courts of law, - - - - - - - 593
114. Of proceedings against corporations in chancery, - 594
115. Of proceedings as for contempts, to enforce civil remedies, and to protect the rights of parties in civil actions, 598
116. Of proceedings for the collection of demands against boats and vessels, - - - - - 603
117. Of forcible entries and unlawful detainers, - - 605
118. Of actions by persons holding claims on United States lands, - - - - - - 610
119. Of the action of replevin, - - - - 611
120. Of the lien of mechanics and others, - - 616
121. Of the foreclosure of mortgages by advertisement, - 619
122. Of the collection of penalties, forfeitures and fines, 622
123. Of proceedings to compel the delivery of books and papers by public officers to their successors, - 624

TITLE XXVI.

Of writs of habeas corpus, mandamus and prohibition, and of informations in the nature of a quo warranto.

Chapter 124. Of the writ of habeas corpus, - - - 626

CHAPTER 125. Of writs of mandamus and prohibition, - - 634
126. Of informations in the nature of a quo warranto, and in certain other cases, - - - - 636

TITLE XXVII.

CHAPTER 127. Of the limitation of actions, - - - - 641

TITLE XXVIII.

Of the relief of insolvent debtors and persons confined in jail on civil process.

CHAPTER 128. Of the releif of insolvent debtors, - - - 647
129. Of the relief of persons confined in jail on civil process, 652

TITLE XXIX.

Of costs and fees.

CHAPTER 130. Of costs, and the recovery and taxation thereof in civil cases, - - - - - - 654
131. Of the fees of certain officers and other persons, and general provisions relative to fees, - - - 660

PART IV.

OF CRIMES, AND THE PUNISHMENT THEREOF, OF PROCEEDINGS IN CRIMINAL CASES, OF PRISONS AND THEIR MANAGEMENT AND DISCIPLINE, OF THE PUBLICATION OF THE REVISED STATUTES AND THE REPEAL OF FORMER STATUTES.

TITLE XXX.

Of crimes, and the punishment thereof.

CHAPTER 132. Of the rights of persons who are accused of crimes and offences, - - - - - - 681
133. Of offences against the lives and persons of individuals, 682
134. Of offences against property, - - - 688
135. Of forgery and counterfeiting, - - - 697
136. Of offences against public justice, - - 700
137. Of offences against the public peace, - - 703
138. Of offences against public policy, - - - - 705
139. Of offences against chastity, morality and decency, 707
140. Of offences against the public health, - - 711
141. General provisions concerning crimes and punishments, 711

TITLE XXXI.

Of proceedings in criminal cases.

CHAPTER 142. Of search warrants and proceedings thereon, - 714
143. Of demanding fugitives from justice and proceedings thereon, - - - - - - 715
144. Of proceedings to prevent the commission of crimes, 717
145. Of the arrest and examination of offenders, commitment for trial and taking bail, - - - 719

CHAPTER 146. Of indictments and proceedings before trial, - 724
147. Of the change of venue in criminal cases, - - 725
148. Of trials in criminal cases, - - - 726
149. Of appeals, new trials and exceptions in criminal cases, 728
150. Of judgments in criminal cases, and the execution thereof, 729
151. Of pardons, - - - - - - 731
152. Of inquests of the dead, - - - - 731

TITLE XXXII.

CHAPTER 153 Of prisons, of their management and discipline, and of imprisonment for offences, - - - - - 735

TITLE XXXIII.

Of the publication of the Revised Statutes and the time when they take effect, and of the repeal of former statutes.

CHAPTER 154. Of the publication of the Revised Statutes, - - 740
155. Of the superintendence of the publication of the Revised Statutes, - - - - - - 741
156. Of the taking effect, repeal and publication of certain acts, 743
157. Of the time when the Revised Statutes shall go into operation, and the repeal of the acts and parts of acts enumerated in this chapter, - - - - 747

APPENDIX.

An act to provide for the election of judges, &c., - - - 759
An act providing for the appraisal and subdivision of the school and university lands, - - - - - - - - - 762
An act amendatory thereof, - - - - - - 765
An act accepting the grant of land made by Congress to aid in the improvement of the Fox and Wisconsin rivers, - - - - 765
An act to provide for the improvement of the Fox and Wisconsin rivers, and connecting the same by a canal, - - - - - 765
Ordinance of July 13, 1787, - - - - - - 773
An act establishing the territorial government of Wisconsin, - 778
Acts amendatory thereof, - - - - - - 785 to 788
An act of Congress granting a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers, &c., - - 788
An act to enable the people of Wisconsin territory to form a constitution and state government, - - - - - - - - 789
An act for the admission of the state of Wisconsin into the Union, - 792
Abstract of the laws of the United States in relation to the naturalization of aliens, - - - - - - - - - 794
An act of Congress respecting fugitives from justice, and persons escaping from the service of their masters, - - - - 798
Acts of Congress relative to the authentication of public acts, records and judicial proceedings, - - - - - - 800, 801
Corrections of clerical mistakes, - - - - - - 802

DECLARATION OF INDEPENDENCE.

[UNANIMOUSLY PASSED BY THE CONGRESS OF THE THIRTEEN UNITED STATES OF AMERICA, JULY 4, 1776.]

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; and that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right—it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain, is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world:

He has refused his assent to laws the most wholesome and encessary for the public good:

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for the naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of land.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harrass our people and eat out their substance.

He has kept among us, in time of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment, for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefit of trial by jury;

For transporting us beyond seas, to be tried for pretended offences;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the Representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract allianees, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor. JOHN HANCOCK.

New Hampshire.

Josiah Bartlett,
William Whipple,
Matthew Thornton.

Massachusetts Bay.

Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

Rhode Island, &c.

Stephen Hopkins,
William Ellery.

Connecticut.

Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

New-York.

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

New Jersey.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

Pennsylvania.

Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

Delaware.

Cæsar Rodney,
George Read,
Thomas M'Kean.

Maryland.

Samuel Chase,
William Paca,
Thomas Stone,
Chas. Carroll, of Carrollton.

Virginia.

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, Jr.,
Francis Lightfoot Lee,
Carter Braxton.

North Carolina.

William Hooper,
Joseph Hewes,
John Penn.

South Carolina.

Edward Rutledge,
Thomas Heyward, Jr.,
Thomas Lynch, Jr.,
Arthur Middleton.

Georgia.

Button Gwinnett,
Lyman Hall,
George Walton.

CONSTITUTION OF THE UNITED STATES.

Preamble.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty, to our ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION I.

Legislative power.

1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION II.

House of representatives and qualifications of electors.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Of representatives.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Apportionment of representatives; enumeration; ratio of representation; first apportionment.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled

to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

Vacancies.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Speaker of the House.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION III.

Senators how chosen.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Senators classed; when seats vacated and filled, vacancies and appointments.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Qualifications of senators

3. No person shall be a senator who shall not have attained to the age of thirty years; and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen

President of the senate

4. The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

Officers.

5. The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

Impeachments.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Extent of judgment.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION IV.

Elections, how regulated.

1. The times, places and manner, of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Meetings of congress

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

Each house to judge of its members; quorum.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

To determine its own rules.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

To keep and publish journal of proceedings.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Adjournment.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION VI.

Compensation; privilege.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Their disability to hold offices.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION VII.

Revenue bills.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

President to sign bill, &c.; proceedings on bills returned by president.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If

any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress, by their adjournment prevent its return, in which case it shall not be a law.

Joint resolutions, except for adjournment, to receive the same sanction as bills

3. Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

Powers of congress to lay taxes, &c.

The congress shall have power:

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States:

Loans

2. To borrow money on the credit of the United States:

Commerce

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

Naturalization—bankruptcy

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

Money.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

Counterfeiting.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

Post offices.

7. To establish post-offices and post-roads:

Science and arts

8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

Inferior courts—piracies and offences.

9. To constitute tribunals inferior to the supreme court. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

War.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

Army.

11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

Navy.

12. To provide and maintain a navy:

Rules for land and naval forces

13. To make rules for the government and regulation of the land and naval forces:

Militia.

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:

Disciplining the militia

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress:

Exclusive legislation.

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square,) as may by cession of particular states, and the acceptance of congress, become

the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: and,

Laws necessary for the execution of their powers.

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION IX.

Importation of certain persons not to be prohibited until after 1808.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Writ of habeas corpus.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

Attainder.

3. No bill of attainder, or ex-post-facto law, shall be passed.

Direct tax.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Of commerce from and between the states.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another.

Of expenditures

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time.

No title of nobility to be granted, &c.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince, or foreign state.

SECTION X.

Powers prohibited to the individual states.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex-post-facto law, or law impairing the obligation of contracts; or grant any title of nobility.

Powers which the states can exercise only under the sanction of congress.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a

foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE 2.

SECTION I.

Executive power.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Electors of president and vice-president.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Meeting of the electors their proceedings. [*Annulled: see amendments, article 12]

[3. *The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themseves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president.]

Time of choosing electors.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same thoughout the United States.

Qualifications for president.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of vacancy, vice-president to act, &c.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and

the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. The president shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them. Compensation of the president

8. Before he enter on the execution of his office, he shall take the following oath or affirmation: Oath of the president.

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

SECTION II.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment. Powers of the president.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments. His power to make treaties., to appoint ambassadors, consuls, and other officers.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session. Power to fill vacancies.

SECTION III.

1. He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States. Duties and other powers.

SECTION IV.

1. The president, vice-president, and all civil officers of the Officers liable to impeachment.

United States, shall be removed from office on impeachment for, and conviction of, treason, bibery, or other high crimes and misdemeanors.

ARTICLE 3.

SECTION I.

Judicial power.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION II.

Extent of judicial power.

See amendment XI.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, [between a state and citizens of another state,] between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

Jurisdiction of supreme court.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

Trial of crimes.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION III.

Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Congress to declare its punishment.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE 4.

SECTION I.

Credit to be given in each state to the acts of other states.

1. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.

And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION II.

Reciprocity of citizens.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Criminals to be delivered up.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Persons held to service to be delivered up

3. No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

Admission of new states.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Congress to have power over territory, &c.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION IV.

Republican form of government guaranteed to each state, &c.

1. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

ARTICLE 5.

Mode of amending this constitution

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE 6.

Assumption of former debts.

1. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Constitution to be the supreme law of the land; the state judges bound thereby.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges, in every state, shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

Certain officers to take oath to support the constitution; no religious test.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States, and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE 7.

How ratified.

1 The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and deputy from Virginia.

New Hampshire.

John Langdon,
Nicholas Gilman.

Massachusetts.

Nathaniel Gorham,
Rufus King.

Connecticut.

William Samuel Johnson,
Roger Sherman.

New-York.

Alexander Hamilton.

New Jersey.

William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.

Pennsylvania.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimmons,
Jared Ingersoll,
James Wilson,
Governeur Morris.

Delaware.

George Read,
Gunning Bedford, jun.,
John Dickinson,
Richard Bassett,
Jacob Broom.

Maryland.

James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

Virginia.

John Blair,
James Madison, jun.

North Carolina.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

South Carolina.

John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

Georgia.

William Few,
Abraham Baldwin.

Attest, WILLIAM JACKSON, *Secretary.*

[The following extract from the journals of congress, shows the adoption of the constitution, and the time when it took effect.]

In Congress, *Saturday*, *Sept.* 13, 1788.

On the question to agree to the following proposition, it was resolved in the affirmative, by the unanimous votes of nine states, viz: of New Hampshire, Massachusetts, Connecticut, New-York, New Jersey, Pennsylvania, Virginia, South Carolina and Georgia.

Constitution declared to be ratified.

Whereas, the convention assembled in Philadelphia, pursuant to the resolution of congress of the 21st February, 1787, did, on the 17th of September, in the same year, report to the United States in congress assembled, a constitution for the people of the United States; whereupon, congress, on the 28th of the same September, did resolve unanimously, "That the said report with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case;" and whereas, the constitution so reported by the convention, and by congress transmitted to the several legislatures, has been ratified in the manner therein declared to be sufficient for the establishment of the same, and such ratifications, duly authenticated, have been received by congress, and are filed in the office of the secretary; therefore,

When government to go into operation.

Resolved, That the first Wednesday in January next, be the day for appointing electors in the several states, which before the said day shall have ratified the said constitution; that the first Wednesday in February next, be the day for the electors to assemble in their respective states, and vote for a president; and that the first Wednesday in March next, be the time, and the present seat of congress the place for commencing proceedings under the said constitution.

[The following amendments were proposed at the first session of the first congress of the United States, which was begun and held at the city of New-York, on the 4th of March, 1789, and were adopted by the requisite number of States.—1 *vol.* *Laws of U. S.* *p.* 72.]

[The preamble and resolution following, preceded by the original proposition of the amendments, and as they have been supposed by a high equity judge, (8th Wendell's Reports, p. 100,) to have an important bearing on the construction of those amendments, they are here inserted. They will be found in the journals of the first session of the first congress.

Preamble and resolution which preceded the original proposition of the amendments.

Congress of the United States, begun and held at the city of New-York, on Wednesday, the 4th of March, 1789. The conventions of a number of the states having at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the government, will best insure the beneficent ends of its institution,

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both houses concurring, that the following articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States, all or any of which articles, when ratified by three-fourths of the said legislatures, to be valid to all intents and purposes, as part of the said constitution, namely;]

AMENDMENTS.

ARTICLE I.

Restrictions of the powers of congress.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

Right of the people to keep arms.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

Quartering of soldiers.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war but in a manner to be prescribed by law.

ARTICLE IV.

Search warrants.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

Proceedings against persons charged with crimes; their rights.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII.

Right of trial by jury.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail, &c.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

Construction of constitution.

The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

Reserved powers.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

[The following amendment was proposed at the second session of the third congress. It is printed in the laws of the United States, 1st vol., p. 73, as article 11:]

ARTICLE XI.

Construction of judicial powers.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

[The three following sections were proposed as amendments at the first session of the eighth congress. They are printed in the laws of the United States as article twelve:]

ARTICLE XII.

Mode of electing president and vice-president of the United States; choosing president.

1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the

presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed: and if no person have such a majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in case of the death or other constitutional disability of the president.

Vice-president. 2. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

Qualification. 3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

[In the edition of the laws of the United States, before referred to, there is an amendment printed as article thirteen, prohibiting citizens from accepting titles of nobility or honor, or presents, offices, &c., from foreign nations. But by a message of the president of the United States, of the 4th of February, 1818, in answer to a resolution of the house of representatives, it appears that this amendment had been ratified only by twelve states, and therefore had not been adopted. See vol. 4 of the printed papers of the 1st session of the 15th congress, No. 76.]

CONSTITUTION OF THE STATE OF WISCONSIN.

PREAMBLE.

We the people of Wisconsin, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquility, and promote the general welfare, do establish this constitution.

Preamble.

ARTICLE I.

DECLARATION OF RIGHTS.

Equality of rights, and how secured.

SECTION 1. All men are born equally free and independent, and have certain inherent rights: among these are life, liberty, and the pursuit of happiness. To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

Slavery not to exist in state.

SEC. 2. There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crime, whereof the party shall have been duly convicted.

Liberty of speech and of the press; evidence in case of libel.

SEC. 3. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous be true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Right of the people to consult and petition.

SEC. 4. The right of the people peaceably to assemble to consult for the common good, and to petition the government or any department thereof, shall never be abridged.

Right of trial by jury.

SEC. 5. The right of trial by jury shall remain inviolate; and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases, in the manner prescribed by law.

Bail.

SEC. 6. Excessive bail shall not be required, nor shall excessive fines be imposed, nor cruel and unusual punishments inflicted.

Rights of the accused.

Sec. 7. In all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment or information, to a speedy public trial by an impartial jury of the county or district wherein the offence shall have been committed; which county or district shall have been previously ascertained by law.

Presentment or indictment in criminal cases

No person to be twice tried for same offence &c.

When accused may be bailed, writ of habeas corpus.

Sec. 8. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy, or in the militia when in actual service in time of war or public danger; and no person for the same offence shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself. All persons shall before conviction be bailable by sufficient sureties, except for capital offences, when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended unless, when, in cases of rebellion or invasion the public safety may require.

Remedy for wrongs how should be obtained.

Sec. 9. Every person is entitled to a certain remedy in the laws, for all injuries or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it; completely and without denial; promptly and without delay, conformably to the laws.

Treason.

Sec. 10. Treason against the state shall consist only in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Searches and seizures.

Sec. 11. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Attainder, ex post facto laws, &c.

Sec. 12. No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate.

Private property.

Sec. 13. The property of no person shall be taken for public use without just compensation therefor.

Tenure of lands, and leases and fines.

Sec. 14. All lands within the state are declared to be allodial, and feudal tenures are prohibited. Leases and grants of agricultural land, for a longer term than fifteen years, in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation, reserved in any grant of land, hereafter made, are declared to be void.

Rights of citizens and aliens to property equal.

Sec. 15. No distinction shall ever be made by law between resident aliens and citizens, in reference to the possession, enjoyment, or descent of property.

No imprisonment for debt.

Sec. 16. No person shall be imprisoned for debt arising out of, or founded on a contract, expressed or implied.

Exemption of property from sale for debt.

SEC. 17. The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted.

Rights of worship and of conscience &c.

SEC. 18. The right of every man to worship Almighty God according to the dictates of his own conscience, shall never be infringed, nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent. Nor shall any control of, or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishments, or mode of worship. Nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

Religious tests and competency of witnesses.

SEC. 19. No religious tests shall ever be required as a qualification for any office of public trust, under the state, and no person shall be rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion.

Subordination of military to civil power.

SEC. 20. The military shall be in strict subordination to the civil power.

Writs of error.

SEC. 21. Writs of error shall never be prohibited by law.

Free government how maintained.

SEC. 22. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

ARTICLE II.

BOUNDARIES.

Boundaries of state.

SECTION 1. It is hereby ordained and declared that the state of Wisconsin doth consent and accept of the boundaries prescribed in the act of congress entitled "an act to enable the people of Wisconsin territory to form a constitution and state government, and for the admission of such state into the Union," approved August sixth, one thousand eight hundred and forty-six, to wit: Beginning at the north-east corner of the state of Illinois, that is to say, at a point in the centre of Lake Michigan where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence, running with the boundary line of the state of Michigan, through Lake Michigan, Green Bay, to the mouth of the Menomonee river; thence up the channel of the said river to the Brule river; thence up said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule, in a direct line to the centre of the channel between Middle and South islands, in the Lake of the Desert; thence in a direct line to the head waters of the Montreal river, as marked upon the survey made by captain Cram; thence down the main channel of the Montreal river to the middle of Lake Superior; thence through the centre of Lake Superior to the mouth of the St. Louis river; thence up the main channel of said river to the first rapids in the same, above the Indian village, according to Nicollet's map; thence due south to the main branch of the river St. Croix; thence down the main channel of said river to the Mississippi; thence down the centre of the main channel of that river to the northwest corner of the state of Illinois; thence due east with the northern boundary of the state of Illinois, to the place of beginning, as established by "an act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," approved April 18th, 1818. [**Provided, however*, That the following alteration of the aforesaid boundary be, and hereby is, proposed to the congress of the United States as the preference of the state of Wisconsin, and if the same shall be assented and agreed to by the congress of the United States then the same shall be and forever remain obligatory on the state of Wisconsin, viz: leaving the aforesaid boundary line at the foot of the rapids of the St. Louis river; thence in a direct line, bearing south-westerly to the mouth of the Iskodewabo, or Rum river, where the same empties into the Mississippi river; thence down the main channel of the said Mississippi river, as prescribed in the aforesaid boundary.]

[*Not assented to by Congress.]

Propositions of Congress accepted and confirmed.

SEC. 2. The propositions contained in the act of Congress, are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States, and it is hereby ordained that this state shall never interfere with the primary disposal of the soil within the same, by the United States, nor with any regulations congress may find necessary for securing the title in such soil to *bona fide* purchasers thereof; and no tax shall be imposed on land, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents.

Proviso.

Provided, That nothing in this constitution, or in the act of Congress aforesaid, shall in any manner prejudice or affect the right of the state of Wisconsin to five hundred thousand acres of land granted to said state, and to be hereafter selected and located, by, and under the act of congress, entitled "an act to appropriate the proceeds of the sales of the public lands, and grant pre-emption rights," approved September fourth, one thousand eight hundred and forty-one.

ARTICLE III.

SUFFRAGE.

Who are qualified electors.

SECTION 1. Every male person, of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state for one year next preceding any election, shall be deemed a qualified elector at such election:

1. White citizens of the United States.
2. White persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization.
3. Persons of Indian blood, who have once been declared by law of congress to be citizens of the United States, any subsequent law of congress to the contrary notwithstanding.
4. Civilized persons of Indian descent, not members of any tribe. *Provided*, That the legislature may at any time, extend by law, the right of suffrage to persons not herein enumerated; but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all the votes cast at such election.

Who not.

SEC. 2. No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election: nor shall any person convicted of treason or felony be qualified to vote at any election unless restored to civil rights.

Votes to be by ballot.

SEC. 3. All votes shall be given by ballot, except for such township officers as may by law be directed or allowed to be otherwise chosen.

Absence.

SEC. 4. No person shall be deemed to have lost his residence in this state by reason of his absence on business of the United States, or of this state.

Soldiers, seamen and marines.

SEC. 5. No soldier, seaman, or marine, in the army or navy of the United States, shall be deemed a resident of this state in consequence of being stationed within the same.

Persons may be excluded from right of suffrage for crimes and wagers.

SEC. 6. Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery or larceny, or of any infamous crime, and depriving every person who shall make, or become directly or indirectly interested in any bet or wager depending upon the result of any election, from the right to vote at such election.

ARTICLE IV.

LEGISLATIVE.

Legislative power.

SECTION 1. The legislative power shall be vested in a senate and assembly.

Number of members of senate and assembly.

SEC. 2. The number of the members of the assembly shall never be less than fifty-four, nor more than one hundred. The senate shall consist of a number not more than one-third, nor less than one-fourth of the number of the members of the assembly.

Census, and of the apportionment of members.

SEC. 3. The legislature shall provide by law for an enumeration of the inhabitants of the state, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and at their first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States army and navy.

Members of assembly how and when chosen, and districts how formed.

SEC. 4. The members of the assembly shall be chosen annually by single districts, on the Tuesday succeeding the first Monday of November, by the qualified electors of the several districts; such districts to be bounded by county, precinct, town, or ward lines, to consist of contiguous territory, and be in as compact form as practicable.

Senators how and when elected and classed.

Senate districts how formed and numbered.

SEC. 5. The senators shall be chosen by single districts of convenient contiguous territory, at the same time and in the same manner as members of the assembly are required to be chosen, and no assembly district shall be divided in the formation of a senate district. The senate districts shall be numbered in regular series, and the senators chosen by the odd numbered districts shall go out of office at the expiration of the first year, and the senators chosen by the even numbered districts shall go out of office at the expiration of the second year, and thereafter the senators shall be chosen for the term of two years.

Qualification of members.

Sec. 6. No person shall be eligible to the legislature who shall not have resided one year within the state, and be a qualified elector in the district which he may be chosen to represent.

Each house to judge of its members; what to constitute a quorum

Sec. 7. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house may provide.

To determine its rules, punish for contempts, and expel.

Sec. 8. Each house may determine the rules of its own proceedings, punish for contempt and disorderly behavior, and, with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause.

To choose its own officers.

Sec. 9. Each house shall choose its own officers, and the senate shall choose a temporary president, when the lieutenant-governor shall not attend as president, or shall act as governor.

To keep and publish a journal, to sit with open doors, and how may adjourn.

Sec. 10. Each house shall keep a journal of its proceedings, and publish the same, except such parts as require secrecy. The doors of each house shall be kept open except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than three days.

Legislature where and how often to meet

Sec. 11. The legislature shall meet at the seat of government, at such time as shall be provided by law, once in each year, and not oftener, unless convened by the governor.

No member eligible to civil office created during his term.

Sec. 12. No member of the legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the state, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected.

Who ineligible, and of subsequent disability.

Sec. 13. No person being a member of congress, or holding any military or civil office under the United States, shall be eligible to a seat in the legislature; and if any person shall, after his election as a member of the legislature, be elected to congress, or be appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Writs of election to fill vacancies

Sec. 14. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

Members privileged from arrest and service of civil process

Sec. 15. Members of the legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest; nor shall they be subject to any civil process, during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

Not liable for words spoken in debate.

Sec. 16. No member of the legislature shall be liable in any civil action or criminal prosecution whatever, for words spoken in debate.

Style of laws.

Sec. 17. The style of the laws of the state shall be, "The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:" and no law shall be enacted except by bill.

Private and local bills.

Sec. 18. No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title.

Bills may originate in either house.

Sec. 19. Any bill may originate in either house of the legislature; and a bill passed by one house may be amended by the other.

Yeas and nays.

Sec. 20. The yeas and nays of the members of either house, on any question, shall at the request of one-sixth of those present, be entered on the journal.

Compensation of members.

Sec. 21. Each member of the legislature shall receive for his services, two dollars and fifty cents for each day's attendance during the session, and ten cents for every mile he shall travel in going to and returning from the place of the meeting of the legislature, on the most usual route.

Boards of supervisors may be vested with certain powers.

Sec. 22. The legislature may confer upon the boards of supervisors of the several counties of the state, such powers, of a local, legislative, and administrative character, as they shall from time to time prescribe.

But one system of town and county government.

Sec. 23. The legislature shall establish but one system of town and county government, which shall be as nearly uniform as praccable.

Lotteries and divorces.

Sec. 24. The legislature shall never authorize any lottery, or grant any divorce.

Stationery and printing to be let to lowest bidder.

Sec. 25. The legislature shall provide by law that all stationery required for the use of the state, and all printing authorized and required by them to be done for their use, or for the state, shall be let by contract to the lowest bidder; but the legislature may establish a maximum price. No member of the legislature, or other state officer, shall be interested, either directly or indirectly, in any such contract.

Extra compensation not to be granted, nor compensation to be increased or diminished.

Sec. 26. The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the services shall have been rendered or the contract entered into. Nor shall the compensation of any public officer be increased or diminished during his term of office.

Suits against the state.

Sec. 27. The legislature shall direct by law in what manner and in what courts suits may be brought against the state.

Oath of office, by whom to be taken.

Sec. 28. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe an oath or affirmation to support the constitution of the United States, and the constitution of the state of Wisconsin, and faithfully to discharge the duties of their respective offices to the best of their ability.

Militia.

Sec. 29. The legislature shall determine what persons shall constitute the militia of the state, and may provide for organizing and disciplining the same, in such manner as shall be prescribed by law.

Elections by legislature, viva voce.

Sec. 30. In all elections to be made by the legislature, the members thereof shall vote *viva voce*, and their votes shall be entered on the journal.

ARTICLE V.

EXECUTIVE.

Executive power vested in governor, and his term of office.

SECTION 1. The executive power shall be vested in a governor, who shall hold his office for two years. A lieutenant governor shall be elected at the same time, and for the same term.

Who eligible as governor and lieutenant governor.

SEC. 2. No person, except a citizen of the United States, and a qualified elector of the state, shall be eligible to the office of governor or lieutenant governor.

When and how chosen

SEC. 3. The governor and lieutenant governor shall be elected by the qualified electors of the state, at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant governor, shall be elected. But in case two or more shall have an equal and the highest number of votes for governor or lieutenant governor, the two houses of the legislature, at its next annual session, shall forthwith, by joint ballot, choose one of the persons so having an equal and the highest number of votes for governor or lieutenant governor. The returns of election for governor and lieutenant governor shall be made in such manner as shall be provided by law.

Powers of the governor

SEC. 4. The governor shall be commander-in-chief of the military and naval forces of the state. He shall have power to convene the legislature on extraordinary occasions; and in case of invasion, or danger from the prevalence of contagious disease at the seat of government, he may convene them at any other suitable place within the state. He shall communicate to the legislature, at every session, the condition of the state, and recommend such matters to them for their consideration, as he may deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.

His compensation.

SEC. 5. The governor shall receive, during his continuance in office, an annual compensation of one thousand two hundred and fifty dollars.

His power as to reprieves, pardons, &c.

SEC. 6. The governor shall have power to grant reprieves, commutations, and pardons, after conviction, for all offences, except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature, at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation, or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve, with his reasons for granting the same.

When his powers and duties to devolve on lieutenant governor.

SEC. 7. In case of the impeachment of the governor, or his removal from office, death, inability from mental or physical disease, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor, for the residue of the term, or until the governor, absent or impeached, shall have returned, or the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of the military force thereof, he shall continue commander-in-chief of the military force of the state.

Lieutenant governor to be president of senate; when secretary of state to act as governor.

SEC. 8. The lieutenant governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the state, the secretary of state shall act as governor until the vacancy shall be filled, or the disability shall cease.

Compensation of lieutenant governor.

SEC. 9. The lieutenant governor shall receive double the per diem allowance of members of the senate, for every day's attendance as president of the senate, and the same mileage as shall be allowed to members of the legislature.

Power and duty of governor relative to bills; proceedings on bills returned by governor.

SEC. 10. Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

ARTICLE VI.

ADMINISTRATIVE.

Election of secretary of state, treasurer and attorney general, and their term of office.

SECTION 1. There shall be chosen by the qualified electors of the state, at the times and places of choosing the members of the legislature a secretary of state, treasurer, and an attorney general, who shall severally hold their offices for the term of two years.

Duties of secretary of state, and his compensation.

SEC. 2. The secretary of state shall keep a fair record of the official acts of the legislature and executive department of the state, and shall, when required, lay the same and all matters relative thereto before either branch of the legislature. He shall be *ex-officio* auditor, and shall perform such other duties as shall be assigned him by law. He shall receive as a compensation for his services, yearly, such sum as shall be provided by law, and shall keep his office at the seat of government.

Same of treasurer and attorney general.

SEC. 3. The powers, duties, and compensation of the treasurer and attorney general shall be prescribed by law.

Sheriffs, coroners, registers of deeds, and district attorneys, how chosen, and term of office, &c.; may be removed by governor.

SEC. 4. Sheriffs, coroners, registers of deeds, and district attorneys shall be chosen by the electors of the respective counties, once in every two years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for two years next succeeding the termination of their offices. They may be required by law to renew their security from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The governor may remove any officer in this section mentioned, giving to such officer a copy of the charges against him, and an opportunity of being heard in his defence.

ARTICLE VII.

JUDICIARY.

Of impeachments, and mode of proceeding therein, and extent of judgment.

SECTION 1. The court for the trial of impeachments shall be composed of the senate. The house of representatives shall have the power of impeaching all civil officers of this state, for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until his acquittal. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment, according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold any office of honor, profit, or trust, under the state; but the party impeached shall be liable to indictment, trial and punishment, according to law.

Judicial power where vested.

SEC. 2. The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, circuit courts, courts of probate, and in justices of the peace. The legislature may also vest such jurisdiction as shall be deemed necessary in municipal courts, and shall have power to establish inferior courts in the several counties, with limited civil and criminal jurisdiction: *Provided*, That the jurisdiction which may be vested in municipal courts shall not exceed, in their respective municipalities, that of circuit courts in their respective circuits, as prescribed in this constitution; and that the legislature shall provide as well for the election of judges of the municipal courts as of the judges of inferior courts, by the qualified electors of the respective jurisdictions: The term of office of the judges of the said municipal and inferior courts shall not be longer than that of the judges of the circuit courts.

Election and term of office of judges of municipal and inferior courts.

Jurisdiction and powers of supreme court.

SEC. 3. The supreme court, except in cases otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state; but in no case removed to the supreme court, shall a trial by jury be allowed. The supreme court shall have a general superintending control over all inferior courts; it shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other original and remedial writs, and to hear and determine the same.

Circuit judges to be judges of supreme court; what number to constitute a quorum.

Sec. 4. For the term of five years, and thereafter until the legislature shall otherwise provide, the judges of the several circuit courts shall be judges of the supreme court, four of whom shall constitute a quorum, and the concurrence of a majority of the judges present shall be necessary to a decision. The legislature shall have power, if they should think it expedient and necessary, to provide by law, for the organization of a separate supreme court, with the jurisdiction and powers prescribed in this constitution, to consist of one chief justice and two associate justices, to be elected by the qualified electors of the state, at such time and in such manner as the legislature may provide. The separate supreme court, when so organized, shall not be changed or discontinued by the legislature; the judges thereof shall be so classified that but one of them shall go out of office at the same time, and their term of office shall be the same as is provided for the judges of the circuit court. And whenever the legislature may consider it necessary to establish a separate supreme court, they shall have power to reduce the number of circuit judges to four, and subdivide the judicial circuits, but no such subdivision or reduction shall take effect until after the expiration of the term of some one of the said judges, or until a vacancy occur by some other means.

Separate supreme court may be established, &c.

Judicial circuits.

Sec. 5. The state shall be divided into five judicial circuits, to be composed as follows: The first circuit shall comprise the counties of Racine, Walworth, Rock, and Green. The second circuit, the counties of Milwaukee, Waukesha, Jefferson, and Dane. The third circuit, the counties of Washington, Dodge, Columbia, Marquette, Sauk, and Portage. The fourth circuit, the counties of Brown, Manitowoc, Sheboygan, Fond du Lac, Winnebago, and Calumet. And the fifth circuit shall comprise the counties of Iowa, Lafayette, Grant, Crawford, and St Croix; and the county of Richland shall be attached to Iowa, the county of Chippewa to the county of Crawford, and the county of La Pointe to the county of St. Croix, for judicial purposes, until otherwise provided by the legislature.

Number of circuits may be increased and limits altered.

Sec. 6. The legislature may alter the limits, or increase the number of circuits, making them as compact and convenient as practicable, and bounding them by county lines, but no such alteration or increase shall have the effect to remove a judge from office. In case of an increase of circuits, the judge or judges shall be elected as provided in this constitution, and receive a salary not less than that herein provided for judges of the circuit court.

Judge to be elected for each circuit and to reside therein.

Sec. 7. For each circuit there shall be a judge chosen by the qualified electors therein, who shall hold his office as is provided in this constitution, and until his successor shall be chosen and qualified; and after he shall have been elected, he shall reside in the circuit for which he was elected. One of said judges shall be designated as chief justice, in such manner as the legislature shall provide. And the legislature shall, at its first session, provide by law, as well for the election of, as for classifying the judges of the circuit court, to be elected under this constitution in such manner

Designation of chief justice and classification of judges.

that one of said judges shall go out of office in two years, one in three years, one in four years, one in five years, and one in six years, and thereafter the judge elected to fill the office shall hold the same for six years.

Jurisdiction and powers of circuit courts.

Sec. 8. The circuit courts shall have original jurisdiction in all matters, civil and criminal, within this state, not excepted in this constitution, and not hereafter prohibited by law, and appellate jurisdiction from all inferior courts and tribunals, and a supervisory control over the same. They shall also have the power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and all other writs necessary to carry into effect their orders, judgments, and decrees, and give them a general control over inferior courts and jurisdictions.

Vacancies how filled.

Sec. 9. When a vacancy shall happen in the office of judge of the supreme or circuit courts, such vacancy shall be filled by an appointment of the Governor, which shall continue until a successor is elected and qualified; and when elected, such successor shall hold his office the residue of the unexpired term. There shall be no election for a judge or judges at any general election for state or county officers, nor within thirty days either before or after such election.

Judges not to be elected at general election.

Salary of judges.

Sec. 10. Each of the judges of the supreme and circuit courts shall receive a salary, payable quarterly, of not less than one thousand five hundred dollars annually; they shall receive no fees of office, or other compensation than their salaries; they shall hold no office of public trust, except a judicial office, during the term for which they are respectively elected, and all votes for either of them, for any office except a judicial office, given by the legislature or the people, shall be void. No person shall be eligible to the office of judge, who shall not, at the time of his election, be a citizen of the United States, and have attained the age of twenty-five years, and be a qualified elector within the jurisdiction for which he may be chosen.

Disqualified from holding other office, and who eligible.

Terms of suppreme and circuits courts and interchange of judges.

Sec. 11. The supreme court shall hold at least one term annually, at the seat of government of the state, at such time as shall be provided by law, and the legislature may provide for holding other terms, and at other places, when they may deem it necessary. A circuit court shall be held at least twice in each year, in each county of this state, organized for judicial purposes. The judges of the circuit court may hold courts for each other, and shall do so when required by law.

Clerks of the circuit court, and clerk of the supreme court.

Sec. 12. There shall be a clerk of the circuit court chosen in each county organized for judicial purposes, by the qualified electors thereof, who shall hold his office for two years, subject to removal, as shall be provided by law. In case of a vacancy, the judge of the circuit court shall have the power to appoint a clerk, until the vacancy shall be filled by an election. The clerk thus elected or appointed, shall give such security as the legislature may require; and when elected, shall hold his office for a full term. The supreme court shall appoint its own clerk, and the clerk of a circuit court may be appointed clerk of the supreme court.

Removal of judges.

Sec. 13. Any judge of the supreme or circuit court may be removed from office by address of both houses of the legislature, if two-thirds of all the members elected to each house concur therein, but no removal shall be made by virtue of this section, unless the judge complained of shall have been served with a copy of the charges against him, as the ground of address, and shall have had an opportunity of being heard in his defence. On the question of removal, the ayes and noes shall be entered on the journals.

Judge of probate.

SEC. 14. There shall be chosen in each county, by the qualified electors thereof, a judge of probate, who shall hold his office for two years, and until his successor shall be elected and qualified, and whose jurisdiction, powers and duties, shall be prescribed by law: *Provided, however*, That the legislature shall have power to abolish the office of judge of probate in any county, and to confer probate powers upon such inferior courts as may be established in said county.

Office may be abolished.

Justices of the peace, their term of office and classification.

SEC. 15. The electors of the several towns, at their annual town meetings, and the electors of cities and villages, at their charter elections, shall in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be for two years, and until their successors in office shall be elected and qualified. In case of an election to fill a vacancy occurring before the expiration of a full term, the justice elected shall hold for the residue of the unexpired term. Their number and classification shall be regulated by law. And the tenure of two years shall in no wise interfere with the classification in the first instance. The justices thus elected shall have such civil and criminal jurisdiction as shall be prescribed by law.

Tribunals of conciliation.

SEC. 16. The legislature shall pass laws for the regulation of tribunals of conciliation, defining their powers and duties. Such tribunals may be established in and for any township, and shall have power to render judgment, to be obligatory on the parties, when they shall voluntarily submit their matter in difference to arbitration, and agree to abide the judgment, or assent thereto in writing.

Style of writs, and how criminal prosecutions conducted, &c.

SEC. 17. The style of all writs and process shall be, "The state of Wisconsin." All criminal prosecutions shall be carried on in the name and by the authority of the same; and all indictments shall conclude against the peace and dignity of the state.

Tax on civil suits.

SEC. 18. The legislature shall impose a tax on all civil suits commenced or prosecuted in the municipal, inferior, or circuit courts, which shall constitute a fund to be applied toward the payment of the salary of judges.

Testimony in equity, &c.

SEC. 19. The testimony in causes in equity, shall be taken in like manner as in cases at law; and the office of master in chancery, is hereby prohibited.

Suitors may prosecute or defend in person or by attorney

SEC. 20. Any suitor in any court of this state, shall have the right to prosecute or defend his suit either in his own proper person or by an attorney or agent of his choice.

Legislature to provide for publication of laws and decisions; and no law to be in force until published.

SEC. 21. The legislature shall provide by law for the speedy publication of all statute laws, and of such judicial decisions made within the state, as may be deemed expedient. And no general law shall be in force until published.

Legislature to appoint commissioners to revise practice, &c.

SEC. 22. The legislature at its first session after the adoption of this constitution, shall provide for the appointment of three commissioners, whose duty it shall be to inquire into, revise and simplify the rules of practice, pleadings, forms, and proceedings, and arrange a system adapted to the courts of record of this state, and report the same to the legislature, subject to their modification and adoption; and such commission shall terminate upon the rendering of the report, unless otherwise provided by law.

Judicial powers may be vested in certain persons.

SEC. 23. The legislature may provide for the appointment of one or more persons in each organized county, and may vest in such persons such judicial powers as shall be prescribed by law: *Provided*, That said power shall not exceed that of a judge of the circuit court at chambers.

ARTICLE VIII.

FINANCE.

Rule of taxation to be uniform.

SECTION 1. The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe.

How money to be paid out of treasury.

SEC. 2. No money shall be paid out of the treasury, except in pursuance of an appropriation by law.

Credit of the state not to be given for private purposes.

SEC. 3. The credit of the state shall never be given or loaned in aid of any individual, association, or corporation.

State not to contract debt except in certain cases.

SEC. 4. The state shall never contract any public debt, except in the cases and manner herein provided.

Annual tax to be levied to defray state expenses.

SEC. 5. The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year; and whenever the expenses of any year shall exceed the income, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year.

For what purpose, to what extent, and how public debt may be contracted.

SEC. 6. For the purpose of defraying extraordinary expenditures, the state may contract public debts; but such debts shall never in the aggregate exceed one hundred thousand dollars. Every such debt shall be authorized by law, for some purpose or purposes to be distinctly specified therein; and the vote of a majority of all the members elected to each house, to be taken by yeas and nays, shall be necessary to the passage of such law; and every such law shall provide, for levying an annual tax sufficient to pay the annual interest of such debt, and the principal within five years from the passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished until the principal and interest of such debt shall have been wholly paid.

When legislature may borrow money, and how to be applied.

SEC. 7. The legislature may also borrow money to repel invasion, suppress insurrection, or defend the state in time of war; but the money thus raised shall be applied exclusively to the object for which the loan was authorized, or to the repayment of the debt thereby created.

Passage of laws imposing taxes, &c., to be by yeas and nays, and three-fifths of each house to constitute a quorum

SEC. 8. On the passage in either house of the legislature, of any law which imposes, continues, or renews a tax, or creates a debt or charge, or makes, continues, or renews an appropriation of public or trust money, or releases, discharges, or commutes a claim or demand of the state, the question shall be taken by yeas and nays, which shall be duly entered on the journal; and three-fifths of all the members elected to such house, shall in all such cases be required to constitute a quorum therein.

When only state scrip may be issued.

SEC. 9. No scrip, certificate, or other evidence of state debt whatsoever, shall be issued, except for such debts as are authorized by the sixth and seventh sections of this article.

State not to contract debt for internal improvement, but may apply the avails of grants, &c., to that purpose.

SEC. 10. The state shall never contract any debt for works of internal improvement, or be a party in carrying on such works; but whenever grants of land, or other property, shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works, and shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

ARTICLE IX.

EMINENT DOMAIN AND PROPERTY OF THE STATE.

Concurrent jurisdiction of state.

Navigable rivers to be common highways.

SECTION 1. The state shall have concurrent jurisdiction on all rivers and lakes bordering on this state, so far as such rivers or lakes shall form a common boundary to the state, and any other state or territory now or hereafter to be formed and bounded by the same. And the river Mississippi, and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost, or duty therefore.

Lands and other property of the territory to vest in the state.

SEC. 2. The title to all lands, and other property, which have accrued to the territory of Wisconsin, by grant, gift, purchase, forfeiture, escheat, or otherwise, shall vest in the state of Wisconsin.

Ultimate property of lands in the people of the state, and when no heirs to escheat to the people.

SEC. 3. The people of the state, in their right of sovereignty, are declared to possess the ultimate property in and to all lands within the jurisdiction of the state; and all lands, the title to which shall fail from a defect of heirs, shall revert, or escheat to the people.

ARTICLE X.

EDUCATION.

State superintendent of public instruction, how elected, and his compensation.

SECTION 1. The supervision of public instruction shall be vested in a state superintendent, and such other officers as the legislature shall direct. The state superintendent shall be chosen by the qualified electors of the state, in such manner as the legislature shall provide; his powers, duties and compensation shall be prescribed by law: *Provided*, That his compensation shall not exceed the sum of twelve hundred dollars annually.

What to constitute school fund, to be set apart, and how interest applied.

SEC. 2. The proceeds of all lands that have been or hereafter may be granted by the United States to this state, for educational purposes, (except the lands heretofore granted for the purposes of a university,) and all moneys, and the clear proceeds of all property, that may accrue to the state by forfeiture or escheat, and all moneys which may be paid as an equivalent for exemption from military duty, and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, and all moneys arising from any grant to the state, where the purposes of such grant are not specified, and the five hundred thousand acres of land to which the state is entitled by the provisions of an act of congress, entitled "an act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved the fourth day of September, one thousand eight hundred and forty-one, and also the five *per centum* of the nett proceeds of the public lands to which the state shall become entitled on her admission into the union, (if congress shall consent to such appropriation of the two grants last mentioned,) shall be set apart as a separate fund, to be called the school fund, the interest of which, and all other revenues derived from the school lands, shall be exclusively applied to the following objects, to wit:

1. To the support and maintenance of common schools in each school district, and the purchase of suitable libraries and apparatus therefor.

2. The residue shall be appropriated to the support and maintenance of academies and normal schools, and suitable libraries and apparatus therefor.

District schools to be established by law, and to be free and not sectarian.

SEC. 3. The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable, and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years, and no sectarian instruction shall be allowed therein.

Annual tax to be raised for support of schools, and amount thereof.

SEC. 4. Each town and city shall be required to raise, by tax, annually, for the support of common schools therein, a sum not less than one-half the amount received by such town or city respectively for school purposes, from the income of the school fund.

Income of school fund, how to be distributed, and when distribution not to be made.

SEC. 5. Provision shall be made by law for the distribution of the income of the school fund among the several towns and cities of the state, for the support of common schools therein, in some just proportion to the number of children and youth resident therein, between the ages of four and twenty years, and no appropriation shall be made from the school fund to any city or town, for the year in which said city or town shall fail to raise such tax, nor to any school district for the year in which a school shall not be maintained at least three months.

State university to be established; what to constitute university funds, and how the interest is to be applied.

SEC. 6. Provision shall be made by law for the establishment of a state university, at or near the seat of state government, and for connecting with the same from time to time such colleges in different parts of the state, as the interests of education may require. The proceeds of all lands that have been or may hereafter be granted by the United States to the state for the support of a university, shall be and remain a perpetual fund, to be called the "university fund," the interest of which shall be appropriated to the support of the state university, and no sectarian instruction shall be allowed in such university.

Sec. 7. The secretary of state, treasurer, and attorney general shall constitute a board of commissioners for the sale of the school and university lands, and for the investment of the funds arising therefrom. Any two of said commissioners shall be a quorum for the transaction of all business pertaining to the duties of their office.

Commissioners for the sale of the school and university lands and the investment of the funds.

Sec. 8. Provision shall be made by law for the sale of all school and university lands, after they shall have been appraised, and when any portion of such lands shall be sold, and the purchase money shall not be paid at the time of the sale, the commissioners shall take security by mortgage upon the land sold for the sum remaining unpaid, with seven per cent interest thereon, payable annually at the office of the treasurer. The commissioners shall be authorised to execute a good and sufficient conveyance to all purchasers of such lands, and to discharge any mortgages taken as as security, when the sum due thereon shall have been paid. The commissioners shall have power to withhold from sale any portion of such lands when they shall deem it expedient, and shall invest all moneys arising from the sale of such lands, as well as all other university and school funds, in such manner as the legislature shall provide, and shall give such security for the faithful performance of their duties as may be required by law.

Lands to be sold after appraisal & unpaid purchase money to be secured.

Commissioners may withhold lands from sale & shall invest moneys &c.

ARTICLE XI.

CORPORATIONS.

Section 1. Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws or special acts enacted under the provisions of this section may be altered or repealed by the legislature at any time after their passage.

Corporations other than banking how to be formed; all corporation laws may be altered or repealed.

Sec. 2. No municipal corporation shall take private property for public use against the consent of the owner, without the necessity thereof being first established by the verdict of a jury.

Private property when not to be taken by municipal corporations.

Sec. 3. It shall be the duty of the legislature, and they are hereby empowered to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and taxation, and in contracting debts by such municipal corporations.

Legislature to provide for organization of cities and villages and to restrict their power of taxation, &c.

Sec. 4. The legislature shall not have power to create, authorise, or incorporate, by any general or special law, any bank or banking power or privilege, or any institution or corporation, having any banking power or plivilege whatever, except as provided in this article.

Not to create or authorise banks or banking except as provided in next section.

Sec. 5. The legislature may submit to the voters at any general election, the question of "bank or no bank," and if at any such election a number of votes equal to a majority of all the votes cast at such election on that subject shall be in favor of banks, then the

Banks how may be created.

legislature shall have power to grant bank charters, or to pass a general banking law, with such restrictions and under such regulations as they may deem expedient and proper for the security of the bill holders : *Provided*, that no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors of the state at some general election, and been approved by a majority of the votes cast on that subject at such election.

ARTICLE XII.

AMENDMENTS.

How constitution may be amended.

SECTION 1. Any amendment or amendments to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election, and shall be published for three months previous to the time of holding such election. And if in the legislature so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the legislature shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become part of the constitution : *Provided*, That if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately.

When and how convention to revise or change constitution may be called.

SEC. 2. If at any time a majority of the senate and assembly shall deem it necessary to call a convention to revise or change this constitution, they shall recommend to the electors to vote for or against a convention at the next election for members of the legislature; and if it shall appear that a majority of the electors voting thereon have voted for a convention, the legislature shall at its next session provide for calling such convention.

ARTICLE XIII.

MISCELLANEOUS PROVISIONS.

Political year when to commence; when general election to be held.

SECTION 1. The political year for the state of Wisconsin shall commence on the first Monday in January in each year, and the general election shall be holden on the Tuesday succeeding the first Monday in November in each year.

Inhabitants of state engaged in a duel to be disqualified as electors, and from holding office.

SEC. 2. Any inhabitant of this state who may hereafter be engaged, either directly or indirectly, in a duel, either as principal or accessary, shall forever be disqualified as an elector, and from holding any office under the constitution and laws of this state, and may be punished in such other manner as shall be prescribed by law.

Who ineligible to office in this state.

SEC. 3. No member of congress, nor any person holding any office of profit or trust under the United States, (postmasters excepted,) or under any foreign power; no person convicted of any infamous crime in any court within the United States, and no person being a defaulter to the United States, or to this state, or to any county or town therein, or to any state or territory within the United States, shall be eligible to any office of trust, profit, or honor in this state.

Sec. 4. It shall be the duty of the legislature to provide a great seal for the state, which shall be kept by the secretary of state; and all official acts of the governor, his approbation of the laws excepted, shall be thereby authenticated.

Great seal of state to be provided, and to be kept by secretary, &c.

Sec. 5. All persons residing upon Indian lands within any county of the state, and qualified to exercise the right of suffrage under this constitution, shall be entitled to vote at the polls which may be held nearest their residence, for state, United States, or county officers: *Provided*, that no person shall vote for county officers out of the county in which he resides.

Persons residing on Indian lands, where may vote.

Sec. 6. The elective officers of the legislature, other than the presiding officers, shall be a chief-clerk, and a sergeant-at-arms, to be elected by each house.

Elective officers of legislature.

Sec. 7. No county with an area of nine hundred square miles or less, shall be divided, or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question, shall vote for the same.

When county not to be divided without vote of the people.

Sec. 8. No county seat shall be removed until the point to which it is proposed to be removed, shall be fixed by law, and a majority of the voters of the county, voting on the question, shall have voted in favor of its removal to such point.

How county seat to be removed.

Sec. 9. All county officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town, and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the legislature may direct.

How certain officers to be elected or appointed.

Sec. 10. The legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy where no provision is made for that purpose, in this constitution.

Legislature may declare when offices vacant, and the manner of filling same.

ARTICLE XIV.

SCHEDULE.

Section 1. That no inconvenience may arise by reason of a change from a territorial to a permanent state government, it is declared that all rights, actions, prosecutions, judgments, claims,

All rights to continue, and process to be as valid as if no change in government.

and contracts, as well of individuals as of bodies corporate, shall continue as if no such change had taken place, and all process which may be issued under the authority of the territory of Wisconsin, previous to its admission into the union of the United States, shall be as valid as if issued in the name of the state.

Existing laws to remain in force until they expire or are altered.

SEC. 2. All laws now in force in the territory of Wisconsin, which are not repugnant to this constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the legislature.

Fines &c accruing to the territory, to enure to use of state

SEC. 3. All fines, penalties, or forfeitures, accruing to the territory of Wisconsin, shall enure to the use of the state.

Recognizances and bonds executed to officers, to remain valid; and all property of the territory to vest in the state.

SEC. 4. All recognizances heretofore taken, or which may be taken before the change from territorial to a permanent state government, shall remain valid, and shall pass to, and may be prosecuted in the name of the state, and all bonds executed to the governor of the territory, or to any other officer or court, in his or their official capacity, shall pass to the governor or state authority, and their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly; and all the estate or property, real, personal, or mixed, and all judgments, bonds, specialties, choses in action, and claims or debts of whatsoever description, of the territory of Wisconsin, shall enure to and vest in the state of Wisconsin, and may be sued for and recovered in the same manner and to the same extent, by the state of Wisconsin, as the same could have been by the territory of Wisconsin. All criminal prosecutions and penal actions, which may have arisen, or which may arise before the change from a territorial to a state government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the state. All offences committed against the laws of the territory of Wisconsin, before the change from a territorial to a state government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the state of Wisconsin, with like effect as though such change had not taken place; and all penalties incurred shall remain the same as if this constitution had not been adopted. All actions at law, and suits in equity, which may be pending in any of the courts of the territory of Wisconsin, at the time of the change from a territorial to a state government, may be continued and transferred to any court of the state which shall have jurisdiction of the subject matter thereof.

Criminal suits and offences to be prosecuted, and civil actions to be continued.

Existing officers to continue in office until superseded.

SEC. 5. All officers, civil and military, now holding their offices under the authority of the United States, or of the territory of Wisconsin, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the state.

Seat of government, and first session when and where to be held

SEC. 6. The first session of the legislature of the state of Wisconsin shall commence on the first Monday in June next, and shall be held at the village of Madison, which shall be and remain the seat of government until otherwise provided by law.

Existing county and town officers to hold over until removed or superseded.

SEC. 7. All county, precinct, and township officers, shall continue to hold their respective offices, unless removed by the competent authority, until the legislature shall in conformity with the provisions of this constitution, provide for the holding of elections to fill such offices respectively.

Copy of constitution, &c., to be transmitted to the president.

Sec. 8. The president of this convention shall immediately after its adjournment, cause a fair copy of this constitution, together with a copy of the act of the legislature of this territory, entitled "An act in relation to the formation of a state government in Wisconsin, and to change the time of holding the annual session of the legislature," approved October 27th, 1847, providing for the calling of this convention; and also a copy of so much of the last census of this territory as exhibits the number of its inhabitants, to be forwarded to the President of the United States, to be laid before the congress of the United States at its present session.

Constitution to be submitted for ratification or rejection; who entitled to vote thereon, &c.

Sec. 9. This constitution shall be submitted at an election to be held on the second Monday in March next, for ratification or rejection, to all white male persons of the age of twenty-one years, or upwards, who shall then be residents of this territory and citizens of the United States, or shall have declared their intention to become such in conformity with the laws of congress on the subject of naturalization; and all persons having such qualifications shall be entitled to vote for or against the adoption of this constitution, and for all officers first elected under it. And if the constitution be ratified by the said electors, it shall become the constitution of the state of Wisconsin. On such of the ballots as are for the constitution, shall be written or printed the word "yes;" and on such as are against the constitution, the word "no." The election shall be conducted in the manner now prescribed by law, and the returns made by the clerks of the boards of supervisors or county commissioners (as the case may be) to the governor of the territory, at any time before the tenth day of April next. And in the event of the ratification of this constitution, by a majority of all the votes, given, it shall be the duty of the governor of this territory to make proclamation of the same, and to transmit a digest of the returns to the senate and assembly of the state, on the first day of their session. An election shall be held for governor and lieutenant-governor, treasurer, attorney-general, members of the state legislature, and members of congress, on the second Monday of May next, and no other or further notice of such election shall be required.

First election for governor, &c., when to be held.

Congressional districts.

Sec. 10. Two members of congress shall also be elected on the second Monday of May next; and until otherwise provided by law, the counties of Milwaukee, Waukesha, Jefferson, Racine, Walworth, Rock and Green, shall constitute the first congressional district, and elect one member; and the counties of Washington, Sheboygan, Manitowoc, Calumet, Brown, Winnebago, Fond du Lac, Marquette, Sauk, Portage, Columbia, Dodge, Dane, Iowa, La Fayette, Grant, Richland, Crawford, Chippewa, St. Croix and La Pointe, shall constitute the second congressional district, and shall elect one member.

First elections, how to be conducted and returns made, &c.

Sec. 11. The several elections provided for in this article, shall be conducted according to the existing laws of the territory: *Provided*, that no elector shall be entitled to vote, except in the town, ward, or precinct where he resides. The returns of election for senators and members of assembly, shall be transmitted to the clerk of the board of supervisors, or county commissioners, as the case may be, and the votes shall be canvassed, and certificates of election issued, as now provided by law. In the first senatorial district, the returns of the election for senator shall be made to the proper officer in the county of Brown; in the second senatorial district, to the proper officer in the county of Columbia; in the third senatorial district, to the proper officer in the county of Crawford; in the fourth senatorial district, to the proper officer in the county of Fond du Lac ; and in the fifth senatorial district, to the proper officer in the county of Iowa. The returns of election for state officers and members of congress, shall be certified and transmitted to the speaker of the assembly at the seat of government, in the same manner as the votes for delegate to congress are required to be certified and returned by the laws of the territory of Wisconsin, to the secretary of said territory, and in such time that they may be received on the first Monday in June next; and as soon as the legislature shall be organized, the speaker of the assembly and the president of the senate shall, in the presence of both houses, examine the returns, and declare who are duly elected to fill the several offices hereinbefore mentioned, and give to each of the persons elected, a certificate of his election.

Senate and Assembly districts.

SEC. 12. Until there shall be a new apportionment, the senators and members of the assembly shall be apportioned among the several districts, as hereinafter mentioned, and each district shall be entitled to elect one senator or member of the assembly, as the case may be.

The counties of Brown, Calumet, Manitowoc, and Sheboygan, shall constitute the first senate district.

The counties of Columbia, Marquette, Portage, and Sauk, shall constitute the second senate district.

The counties of Crawford, Chippewa, St. Croix, and La Pointe, shall constitute the third senate district.

The counties of Fond du Lac, and Winnebago, shall constitute the fourth senate district.

The counties of Iowa and Richland, shall constitute the fifth senate district.

The county of Grant shall constitute the sixth senate district.

The county of La Fayette shall constitute the seventh senate district.

The county of Green shall constitute the eighth senate district.

The county of Dane shall constitute the ninth senate district.

The county of Dodge shall constitute the tenth senate district.

The county of Washington shall constitute the eleventh senate district

The county of Jefferson shall constitute the twelfth senate district.

The county of Waukesha shall constitute the thirteenth senate district.

The county of Walworth shall constitute the fourteenth senate district.

The county of Rock shall constitute the fifteenth senate district.

The towns of Southport, Pike, Pleasant Prairie, Paris, Bristol, Brighton, Salem and Wheatland, in the county of Racine, shall constitute the sixteenth senate district.

The towns of Racine, Caledonia, Mount Pleasant, Raymond, Norway, Rochester, Yorkville and Burlington, in the county of Racine, shall constitute the seventeenth senate district.

The third, fourth, and fifth wards of the city of Milwaukee, and the towns of Lake, Oak Creek, Franklin, and Greenfield, in the county of Milwaukee, shall constitute the eighteenth senate district.

The first and second wards of the city of Milwaukee, and the towns of Milwaukee, Wauwatosa, and Granville, in the county of Milwaukee, shall constitute the nineteenth senate district.

The county of Brown shall constitute an assembly district.

The county of Calumet shall constitute an assembly district.

The county of Manitowoc shall constitute an assembly district.

The county of Columbia shall constitute an assembly district.

The counties of Crawford and Chippewa shall constitute an assembly district.

The counties of St. Croix and La Pointe shall constitute an assembly district.

The towns of Windsor, Sun Prairie and Cottage Grove, in the county of Dane, shall constitute an assembly district.

The towns of Madison, Cross Plains, Clarkson, Springfield, Verona, Montrose, Oregon and Greenfield, in the county of Dane, shall constitute an assembly district.

The towns of Rome, Dunkirk, Christiana, Albion, and Rutland, in the county of Dane, shall constitute an assembly district.

The towns of Burnett, Chester, Le Roy and Williamstown, in the county of Dodge, shall constitute an assembly district.

The towns of Fairfield, Hubbard and Rubicon, in the county of Dodge, shall constitute an assembly district.

The towns of Hustisford, Ashippun, Lebanon and Emmet, in the county of Dodge, shall constitute an assembly district.

The towns of Elba, Lowell, Portland and Clyman, in the county of Dodge, shall constitute an assembly district.

The towns of Calamus, Beaver Dam, Fox Lake and Trenton, in the county of Dodge, shall constitute an assembly district.

The towns of Calumet, Forest, Auburn, Byron, Taychedah, and Fond du Lac, in the county of Fond du Lac, shall constitute an assembly district.

The towns of Alto, Metoman, Ceresco, Rosendale, Waupun, Oakfield, and Seven Mile Creek, in the county of Fond du Lac, shall constitute an assembly district.

The precincts of Hazel Green, Fairplay, Smeltzer's Grove, and Jamestown, in the county of Grant, shall constitute an assembly district.

The precincts of Plattville, Head of Platte, Centerville, Muscoday, and Fennimore, in the county of Grant, shall constitute an assembly district.

The precincts of Pleasant Valley, Potosi, Waterloo, Hurricane, and New-Lisbon, in the county of Grant, shall constitute an assembly district.

The precincts of Beetown, Patch Grove, Cassville, Millville, and Lancaster, in the county of Grant, shall constitute an assembly district.

The county of Green, shall constitute an assembly district.

The precincts of Dallas, Peddlar's Creek, Mineral Point and Yellow Stone, in the county of Iowa, shall constitute an assembly district.

The precincts of Franklin, Dodgeville, Porter's Grove, Arena, and Percussion, in the county of Iowa, and the county of Richland, shall constitute an assembly district.

The towns of Watertown, Aztalan, and Waterloo, in the county of Jefferson, shall constitute an assembly district.

The towns of Ixonia, Concord, Sullivan, Hebron, Cold Spring, and Palmyra, in the county of Jefferson, shall constitute an assembly district.

The towns of Lake Mills, Oakland, Koskonong, Farmington, and Jefferson, in the county of Jefferson, shall constitute an assembly district.

The precincts of Benton, Elk Grove, Belmont, Willow Springs, Prairie, and that part of Shullsburgh precinct north of town one, in the county of La Fayette, shall constitute an assembly district.

The precincts of Wiota, Wayne, Gratiot, White Oak Springs, Fever River, and that part of Shullsburgh precinct south of town two, in the county of La Fayette, shall constitute an assembly district.

The county of Marquette shall constitute an assembly district.

The first ward of the city of Milwaukee shall constitute an assembly district.

The second ward of the city of Milwaukee, shall constitute an assembly district.

The third ward of the city of Milwaukee shall constitute an assembly district.

The fourth and fifth wards of the city of Milwaukee shall constitute an assembly district.

The towns of Franklin and Oak Creek, in the county of Milwaukee, shall constitute an assembly district.

The towns of Greenfield and Lake, in the county of Milwaukee, shall constitute an assembly district.

The towns of Granville, Wauwatosa, and Milwaukee, in the county of Milwaukee, shall constitute an assembly district.

The county of Portage shall constitute an assembly district.

The town of Racine, in the county of Racine, shall constitute an assembly district.

The towns of Norway, Raymond, Caledonia, and Mount Pleasant, in the county of Racine, shall constitute an assembly district.

The towns of Rochester, Burlington, and Yorkville, in the county of Racine, shall constitute an assembly district.

The towns of Southport, Pike, and Pleasant Prairie, in the county of Racine, shall constitute an assembly district.

The towns of Paris, Bristol, Brighton, Salem, and Wheatland, in the county of Racine, shall constitute an assembly district.

The towns of Janesville and Bradford, in the county of Rock, shall constitute an assembly district.

The towns of Beloit, Turtle, and Clinton, in the county of Rock, shall constitute an assembly district.

The towns of Magnolia, Union, Porter, and Fulton, in the county of Rock, shall constitute an assembly district.

The towns of Milton, Lima, and Johnstown, in the county of Rock, shall constitute an assembly district.

The towns of Newark, Rock, Avon, Spring Valley, and Center, in the couty of Rock, shall constitute an assembly district: *Provided*, that if the legislature shall divide the town of Centre, they may attach such part of it to the district lying next north, as they may deem expedient.

The county of Sauk shall constitute an assembly district.

Precincts numbered one, three, and seven, in the county of Sheboygan, shall constitute an assembly district.

Precincts number two, four, five, and six, in the county of Sheboygan, shall constitute an assembly district.

The towns of Troy, East Troy, and Spring Prairie, in the county of Walworth, shall constitute an assembly district.

The towns of Whitewater, Richmond, and Lagrange, in the county of Walworth, shall constitute an assembly district.

The towns of Geneva, Hudson, and Bloomfield, in the county of Walworth, shall constitute an assembly district.

The towns of Darien, Sharon, Walworth, and Linn, in the county of Walworth; shall constitute an assembly district.

The towns of Delavan, Sugar Creek, La Fayette, and Elkhorn, in the county of Walworth, shall constitute an assembly district.

The towns of Lisbon, Menomonee, and Brookfield, in the county of Waukesha, shall constitute an assembly district.

The towns of Warren, Oconomewoc, Summit, and Ottowa, in the county of Waukesha, shall constitute an assembly district.

The towns of Delafield, Genesee, and Pewaukee, in the county of Waukesha, shall constitute an assembly district.

The towns of Waukesha and New Berlin, in the county of Waukesha, shall constitute an assembly district.

The towns of Eagle, Mukwanego, Vernon, and Muskego, in the county of Waukesha, shall constitute an assembly district.

The towns of Port Washington, Fredonia, and Clarence, in the county of Washington, shall constitute an assembly district.

The towns of Grafton and Jackson, in the county of Washington, shall constitute an assembly district.

The towns of Mequon and Germantown, in the county of Washington, shall constitute an assembly district.

The towns of Polk, Richfield, and Erin, in the county of Washington, shall constitute an assembly district.

The towns of Hartford, Addison, West Bend, and North Bend, in the county of Washington, shall constitute an assembly district.

The county of Winnebago shall constitute an assembly district.

The foregoing districts are subject, however, so far to be altered that when any new town shall be organized, it may be added to either of the adjoining assembly districts.

Common law now in force to continue until altered.

Sec. 13. Such parts of the common law as are now in force in the territory of Wisconsin, not inconsistent with this constitution, shall be and continue part of the law of this state until altered or suspended by the legislature.

Senators, &c., first elected, when to enter upon the duties of their office, and how long to continue in office.

Sec. 14. The senators first elected in the even numbered senate districts, the governor, lieutenant governor, and other state officers first elected under this constitution, shall enter upon the duties of their respective offices on the first Monday of June next, and shall continue in office for one year from the first Monday of January next. The senators first elected in the odd numbered senate districts, and the members of the assembly first elected, shall enter upon their duties respectively on the first Monday of June next, and shall continue in office until the first Monday in January next.

Oath of office, by whom administered.

Sec. 15. The oath of office may be administered by any judge or justice of the peace, until the legislature shall otherwise direct.

RESOLUTIONS.

Resolution relative to Lake Michigan and Rock river canal lands.

Resolved, That the congress of the United States be, and is hereby requested, upon the application of Wisconsin for admission into the Union, so to alter the provisions of an act of congress entitled "an act to grant a quantity of land to the territory of Wisconsin, for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock River," approved June eighteenth, eighteen hundred and thirty eight; and so to alter the terms and conditions of the grant made therein, that the odd numbered sections thereby granted and remaining unsold, may be held and disposed of by the state of Wisconsin, as part of the five hundred thousand acres of land to which said state is entitled by the provisions of an act of Congress, entitled "an act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved the fourth day of September, eighteen hundred and forty-one; and further, that the even numbered sections reserved by congress may be offered for sale by the United States for the same minimum price, and subject to the same rights of pre-emption as other public lands of the United States.

Odd numbered sections to constitute part of 500,000 acres.

Even numbered sections to be offered at minimum price, &c.

Excess price of those sold to be refunded.

Resolved, That congress be further requested to pass an act whereby the excess price over and above one dollar and twenty-five cents per acre, which may have been paid by the purchasers of said even numbered sections which shall have been sold by the United States, be refunded to the present owners thereof, or they be allowed to enter any of the public lands of the United States, to an amount equal in value to the excess so paid.

Odd numbered sections to be sold, &c.

Resolved, That in case the old numbered sections shall be ceded to the state as aforesaid, the same shall be sold by the state in the same manner as other school lands: *Provided*, That the same rights of pre-emption as are now granted by the laws of the United States shall be secured to persons who may be actually settled upon such lands at the time of the adoption of this constitution: *And provided further*, That the excess price over and above one dollar and twenty-five cents per acre, absolutely or conditionally contracted to be paid by the purchasers of any part of said sections which shall have been sold by the territory of Wisconsin, shall be remitted to such purchasers, their representatives, or assigns.

Excess price of those sold to be remitted.

Grant of the 500,000 acres and the five per centum to be applied to the use of schools.

Resolved, That congress be requested, upon the application of Wisconsin for admission into the Union, to pass an act whereby the grant of five hundred thousand acres of land, to which the state of Wisconsin is entitled by the provisions of an act of congress entitled "an act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved the fourth day of September, eighteen hundred and forty-one, and also the five per centum of the nett proceeds of the public lands lying within the state, to which it shall become entitled on its admission into the Union, by the provisions of an act of congress, entitled "an act to enable the people of Wisconsin territory to form a constitution and state government, and for the admission of such state into the Union," approved the 6th day of August, eighteen hundred and forty-six, shall be granted to the state of Wisconsin for the use of schools, instead of the purposes mentioned in said acts of congress respectively.

Minimum price of lands in Fox and Wisconsin river grant, reserved to U. S. to be reduced.

Resolved, That the congress of the United States be, and hereby is requested, upon the admission of this state into the Union, so to alter the provisions of the act of congress, entitled "an act to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the territory of Wisconsin," that the price of the lands reserved to the United States, shall be reduced to the minimum price of the public lands.

Legislature to provide for sale of canal lands subject to pre-emption rights of settlers thereon.

Resolved, That the legislature of this state shall make provision by law for the sale of the lands granted to the state in aid of said improvements, subject to the same rights of pre-emption to the settlers thereon, as are now allowed by law to settlers on the public lands.

Resolutions to be signed and submitted to the people and to congress.

Resolved, That the foregoing resolutions be appended to and signed with the constitution of Wisconsin, and submitted therewith to the people of this territory, and to the congress of the United States.

Certificate and names of members of the convention.

We, the undersigned, members of the convention to form a constitution for the state of Wisconsin, to be submitted to the people thereof for their ratification or rejection, do hereby certify that the foregoing is the constitution adopted by the convention.

In testimony, whereof, we have hereunto set our hands, at Madison, the first day of February, A. D. eighteen hundred and forty-eight.

MORGAN L. MARTIN, *President of the convention and delegate from Brown county.*

THO'S MCHUGH, *Secretary*.

Calumet,

G. W. Featherstonhaugh.

Columbia,

James T. Lewis,

Crawford,

Daniel G. Fenton.

Dane,

William H. Fox,
Charles M. Nichols,
William A. Wheeler.

Dodge,

Stoddard Judd,
Charles H. Larrabee,
Samuel W. Lyman.

Fond du Lac,

Samuel W. Beall,
Warren Chase.

Grant,

Orasmus Cole,
George W. Lakin,
Alexander D. Ramsey,
William Richardson,
John Hawkins Rountree.

Green,

James Biggs.

Iowa,

Charles Bishop,
Stephen Hollenbeck,
Joseph Ward.

Jefferson,

Jonas Folts,
Milo Jones,
Theodore Prentiss,
Abraham Vanderpool.

La Fayette,

Charles Dunn,
John O'Connor,
Allen Warden.

Milwaukee,

John L. Doran,
Garret M. Fitzgerald,
Albert Fowler,
Byron Kilbourn,
Rufus King,
Charles H. Larkin,
Morritz Schœffler.

Portage,

William H. Kennedy.

Racine,

Albert G. Cole,
Stephen A. Davenport,
Andrew B. Jackson,
Frederick S. Lovell,
Samuel R. McClellan,
James D. Reymert,
Horace T. Sanders,
Theodore Secor.

Rock,

Almerin M. Carter,
Joseph Colley,
Paul Crandall,
Ezra A. Foote,
Louis P. Harvey,
Edward V. Whiton.

Sheboygan,

Silas Steadman.

Walworth,

Experience Estabrook,
George Gale,
James Harrington,
Augustus C. Kinne,
Hollis Latham,
Ezra A. Mulford.

Washington,

James Fagan,
Patrick Pentony,
Harvey G. Turner.

Waukesha,

Squire S. Case,
Alfred L. Castleman,
Peter D. Gifford,
Eleazer Root,
George Scagel.

Winnebago.

Harrison Reed.

REVISED STATUTES.

REVISED STATUTES

OF THE

STATE OF WISCONSIN.

AN ACT

FOR REVISING AND CONSOLIDATING THE GENERAL STATUTES OF THE STATE OF WISCONSIN.

Whereas, it is expedient that the general statutes of this state should be revised, consolidated and arranged in appropriate parts, chapters and sections, and that omissions and defects therein should be supplied and amended: Therefore,

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows :

PART I.

OF THE BOUNDARIES AND JURISDICTION, DIVISIONS, CIVIL POLITY, AND INTERNAL ADMINISTRATION OF THE STATE.

TITLE I.

OF THE BOUNDARIES, SOVEREIGNTY AND JURISDICTION OF THE STATE, OF ITS CIVIL DIVISIONS, AND THE STATUTES.

CHAPTER 1. Of the boundaries, sovereignty and jurisdiction of the state.
2. Of the division of the state into counties, and their boundaries.
3. Of congressional districts.
4. Of the construction of statutes.
5. Of the publication and distribution of statutes.

CHAPTER 1.

OF THE BOUNDARIES, SOVEREIGNTY AND JURISDICTION OF THE STATE.

Boundaries of State.

SECTION 1. The boundaries of the state of Wisconsin are declared to be as follows: Beginning at the northeast corner of the state of Illinois, that is to say, at a point in the centre of Lake Michigan, where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence, running with the boundary line of the state of Michigan, through Lake Michigan, and Green Bay, to the mouth of the Menomonee river; thence up the channel of said river to Brule river; thence up said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule, in a direct line to the centre of the channel between middle and south islands in the Lake of the Desert; thence in a direct line to the head waters of the Montreal river, as marked upon the survey made by Captain Cram: thence down the main channel of the Montreal river to the middle of Lake Superior; thence through the centre of Lake Superior to the mouth of the St. Louis river; thence up the main channel of said river to the first rapids in the same, above the Indian village, according to Nicolet's map; thence due south to the main branch of the river St. Croix; thence down the main channel of said river to the Mississippi; thence down the centre of the main channel of that river, to the northwest corner of the state of Illinois; thence due east, with the northern boundary of the state of Illinois, to the place of beginning.

Sovereignty and jurisdiction of State

SEC. 2. The sovereignty and jurisdiction of this state shall extend to all places within the boundaries thereof, as declared in the preceding section, subject only to such rights of concurrent jurisdiction as may be granted over any places ceded by the state to the United States; and this state shall have concurrent jurisdiction on all rivers and lakes bordering on this state, so far as such rivers or lakes shall form a common boundary to the state, and any other state or territory.

Duty of governor and state officers.

SEC. 3. It shall be the duty of the governor, and of all the subordinate officers of the state, to maintain and defend its sovereignty and jurisdiction.

CHAPTER 2.

OF THE DIVISION OF THE STATE INTO COUNTIES, AND THEIR BOUNDARIES.

Names of counties

SECTION 1. This state shall be divided into the following counties, to wit: Adams, Brown, Calumet, Chippewa, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Iowa, Jefferson, La Fayette, La Pointe, Manitowoc, Marquette, Milwaukee, Portage, Racine, Richland, Rock, Sauk, Sheboygan, St. Croix, Walworth, Washington, Waukesha and Winnebago; and they shall be bounded as described in the following sections.

Adams.

SEC. 2. The district of country included within the following boundaries shall form and constitute the county of Adams, to wit:

Beginning at the southwest corner of section eighteen, in township fifteen north, of range two east of the fourth principal meridian; and running thence north, on the range line between ranges one and two east, to the northwest corner of township twenty north, of range two east; thence east, on the line between townships twenty and twenty-one north, to the northeast corner of township twenty north, of range seven east; thence south, on the range line between ranges seven and eight east, to the southeast corner of township fourteen north, of range seven east; thence west, on the line between townships thirteen and fourteen east, to the middle of the Wisconsin river; thence up the middle of the main channel of said river, to a point where the section line between sections eighteen and nineteen, in townships fifteen north, intersects said river; thence west, on said section line, to the place of beginning.

Brown.

SEC. 3. The district of country included within the following boundaries shall form and constitute the county of Brown, to wit:

Beginning at a point in the boundary line between this state and the state of Michigan, where the range line between ranges nine and ten east of the meridian aforesaid, strikes said boundary line; running thence easterly on said boundary line to the mouth of the Menomonee river; thence with said boundary line through Green Bay and Lake Michigan, to a point in the range of the east and west line between townships twenty and twenty-one north; thence west on said line to the middle of the Wolf river; thence up the middle of said river until it intersects the range line between ranges nine and ten east; thence north on said range line to the place of beginning.

Calumet.

SEC. 4. The district of country included within the following boundaries shall form and constitute the county of Calumet, to wit:

Beginning at the southeast corner of township seventeen north, of range twenty east of the meridian aforesaid; and running thence north, on the range line between ranges twenty and twenty-one east, to the northeast corner of township twenty north, of range twenty east; thence west, on the township line between townships twenty and twenty-one north, to the northwest corner of township twenty north, of range eighteen east; thence due south through Winnebago lake, to a point in the range of the east and west line which forms the southern boundary of the Indian reservation; thence east on said last named boundary line to the range line between ranges nineteen and twenty east; thence south, on said range line, to the southwest corner of township seventeen north, of range twenty east; thence east on the township line to the place of beginning.

Chippewa

SEC. 5. The district of country included within the following boundaries shall form and constitute the county of Chippewa, to wit:

Beginning in the western boundary line of this state, in the Mississippi river, opposite the mouth of Buffalo river; running thence up the main branch of said Buffalo river to its source; thence along the dividing ridge between the waters of Chippewa and Black rivers to the head waters of Black river; thence due east to the range line between ranges one and two east of the meridian aforesaid; thence north, on said range line, to the township line between townships forty and forty-one north; thence west on said township line to the range line between ranges eleven and twelve west; thence south on said range line to the township line between townships thirty-one and thirty-two north; thence west on said township line to the range line between ranges fourteen and fifteen west; thence south on said range line to a point due east from a point in the western boundary line of this state which is opposite the mouth of Rush river; thence due west to said last named point; thence southerly on said boundary line to the place of beginning.

Columbia.

SEC. 6. The district of country included within the following boundaries shall form and constitute the county of Columbia, to wit:

Beginning at a point in the north line of township thirteen north, in range six east, where the said line intersects the centre of the main channel of the Wisconsin river; running thence down the middle of the main channel of said river to a point where the range line between ranges seven and eight east intersects said river; thence south on said range line, to the middle of the Wisconsin river aforesaid, (in township ten north;) thence down the middle of the main channel of said river, to a point where the north line of townships nine north intersects the same; thence east on said township line to the southeast corner of township ten north of range twelve east; thence north, on the range line, to the northeast corner of township thirteen north of range twelve east; thence west on the township line, to the place of beginning.

Crawford.

SEC. 7. The district of country included within the following boundaries shall form and constitute the county of Crawford, to wit:

Beginning at a point in the western boundary line of this state, in the Mississippi river, opposite the mouth of the Wisconsin river; and running thence northerly on the boundary line of this state, in said Mississippi river, to a point opposite the mouth of Buffalo river; thence on the southern boundary line of Chippewa county, until it strikes the range line between ranges one and two east of the meridian aforesaid; thence south on said range line to the northeast corner of township twelve north of range one east; thence west on the township line, to the northwest corner of township twelve north, of range two west of said meridian; thence south on the range line, to the middle of the Wisconsin river; thence down the middle of the main channel of said river, to the place of beginning.

Dane.

SEC. 8. The district of country included within the following boundaries shall form and constitute the county of Dane, to wit:

Beginning at a point in the centre of the main channel of the Wisconsin river where the range line between ranges five and six east of the meridian aforesaid crosses said river; running thence south, on said range line, to the south west corner of township five north, of range six east; thence east, on the line between townships four and five north, to the south east corner of township five north of range twelve east; thence north, on the range line between ranges twelve and thirteen east, to the northeast corner of township nine north of range twelve east; thence west, on the line between townships nine and ten north, to the middle of the Wisconsin river; thence down the middle of the main channel of said river to the place of beginning.

Dodge

SEC. 9. The district of country included within the following boundaries shall form and constitute the county of Dodge, to wit:

Beginning at the south east corner of township nine north of range seventeen east, of the meridian aforesaid; running thence north, on the range line between ranges seventeen and eighteen east, to the north east corner of township thirteen north of range seventeen east; thence west, on the line between townships thirteen and fourteen north, to the north west corner of township thirteen north of range thirteen east; thence south, on the range line between ranges twelve and thirteen east, to the south west corner of township nine north of range thirteen east; thence east, on the line between townships eight and nine north, to the place of beginning.

Fond du Lac.

SEC. 10. The district of country included within the following boundaries shall form and constitute the county of Fond du Lac, to wit:

Beginning at the south east corner of township thirteen north, of range nineteen east of the meridian aforesaid ; running thence north, on the range line between ranges nineteen and twenty, to the south line of the Indian reservation; thence west on said south line to a point in Lake Winnebago in the range line between ranges seventeen and eighteen east; thence south on said range line to the range of the township line between townships sixteen and seventeen north; thence west to the north-west corner of township sixteen north of range fourteen east ; thence south, on the range line, to the south-west corner of township fourteen north of range fourteen east ; thence east, on the township line to the north-west corner of township thirteen north of range eighteen east ; thence south to the south-west corner of the last named township; thence east, on the township line to the place of beginning.

Grant.

SEC. 11. The district of country included within the following boundaries shall form and constitute the county of Grant, to wit:

Beginning at the south-west corner of this state; running thence east on the boundary line of the State to the fourth principal meridian; thence north on said meridian to the middle of the Wisconsin river; thence down the middle of the main channel of said river to the mouth thereof; thence southerly, on the boundary line of the State, in the middle of the main channel of the Mississippi river to the place of beginning.

Green.

SEC. 12. The district of country included within the following boundaries shall form and constitute the county of Green, to wit:

Beginning at the south-east corner of township one north of range nine east of the meridian aforesaid, in the boundary line of this State; running thence north, on the range line between ranges nine and ten east, to the north-east corner of township four north of range nine east; thence west, on the township line, to the north-west corner of township four north of range six east; thence south, on the range line, to the southwest corner of township one north of range six east; thence east on the boundary line aforesaid to the place of beginning.

Iowa.

SEC. 13. The district of country included within the following boundaries shall form and constitute the county of Iowa, to wit:

Beginning at a point in the middle of the main channel of the Wisconsin river where the fourth principal meridian crosses said river; running thence south on said meridian to the southwest corner of section eighteen in township four north of range one east; thence east on the section lines to the southeast corner of section thirteen in township four north of range five east; thence north on the range line to the middle of the Wisconsin river; thence down the middle of the main channel of said river to the place of beginning.

Jefferson

SEC. 14. The district of country included within the following boundaries shall form and constitute the county of Jefferson, to wit:

Beginning at the southeast corner of township five north of range sixteen east of the meridian aforesaid; running thence north, on the range line, to the north east corner of township eight north in range sixteen east; thence west on the township line to the northwest corner of township eight north of range thirteen east; thence south on the range line to the southwest corner of township five north of range thirteen east; thence east on the township line to the place of beginning.

La Fayette

SEC. 15. The district of country included within the following boundaries shall form and constitute the county of La Fayette, to wit:

Beginning at the southwest corner of township one north, of range one east of the meridian aforesaid, in the boundary line of this State; running thence east on said boundary line to the southeast corner of township one north of range five east; thence north on the range line to the northeast corner of section twenty-four in township four north of range five east; thence on the section lines to the northwest corner of section nineteen in township four north of range one east; thence south on the aforesaid fourth principal meridian to the place of beginning.

La Pointe

SEC. 16. The district of country included within the following boundaries shall form and constitute the county of La Pointe, to wit:

Beginning at a point in the western boundary line of this State where the township line between townships forty and forty-one north, intersects the said boundary line; running thence east on said township line to the range line between ranges one and two east of the meridian aforesaid; thence north on said range line to the boundary line of this State; thence along the eastern, northern and western boundary lines of this State to the place of beginning.

Manitowoc.

SEC. 17. The district of country included within the following boundaries shall form and constitute the county of Manitowoc, to wit:

Beginning at the southwest corner of township seventeen north, of range twenty-one east, of the meridian aforesaid; running thence due east to the boundary line of the state in Lake Michigan; thence northerly on said boundary line to a point in range of the east and west line between townships twenty and twenty-one north; thence west to the northwest corner of township twenty north, of range twenty-one east; thence south on the range line between ranges twenty and twenty-one east, to the place of beginning.

Marquette.

SEC. 18. The district of country included within the following boundaries shall form and constitute the county of Marquette, to wit:

Beginning at the southeast corner of township fourteen north, of range thirteeen east, of the meridian aforesaid; running thence north on the range line to the northeast corner of township twenty north, of range thirteen east; thence west on the township line to the northwest corner of township twenty north of range eight east; thence south on the range line to the southwest corner of township fourteen north of range eight east; thence east on the township line to the place of beginning.

Milwaukee.

SEC. 19. The district of country included within the following boundaries, shall form and constitute the county of Milwaukee, to wit:

Beginning at the southwest corner of township five north, of range twenty-one east; running thence due east to the boundary line of the state in Lake Michigan; thence northerly on said boundary line to a point in range with the east and west line between townships eight and nine north; thence due west to the northwest corner of township eight north of range twenty-one east; thence south on the range line to the place of beginning.

Portage.

SEC. 20. The district of country included within the following boundaries shall form and constitute the county of Portage, to wit:

Beginning at the southwest corner of township twenty-one north of range two east, of the meridian aforesaid; running thence north, on the range line between ranges one and two east, to the northern boundary line of this state; thence easterly on said boundary line to a point where the range line between ranges nine and ten intersects said boundary line; thence south on said range line to the southeast corner of township twenty-one north of range nine east; thence west on the township line between townships twenty and twenty-one north, to the place of beginning.

Racine.

SEC 21. The district of country included within the following boundaries shall form and constitute the county of Racine, to wit:

Beginning at the southwest corner of township one north of range nineteen east, of the meridian aforesaid, in the southern boundary line of this state; running thence due east to the southeast corner of this state in Lake Michigan; thence northerly, on the eastern boundary line of the state in said lake, to a point in range with the east and west line between townships four and five north; thence due west to the northwest corner of township four north, of range nineteen east; thence south on the range line to the place of beginning.

Richland.

SEC 22. The district of country included within the following boundaries shall form and constitute the county of Richland, to wit:

Beginning at a point in the centre of the main channel of the Wisconsin river, where the range line between ranges two and three east, of the meridian aforesaid crosses said river; running thence on said range line to the northeast corner of township twelve north, of range two east; thence west on the township line to the northwest corner of township twelve north, of range two west, of said meridian; thence south on the range line to the middle of the Wisconsin river; thence up the middle of the main channel of said river to the place of beginning.

Rock.

SEC. 23. The district of country included within the following boundaries shall form and constitute the county of Rock, to wit:

Beginning at the southwest corner of township one north, of range ten east, of the meridian aforesaid, in the southern boundary line of this state; running thence east on said boundary line to the southeast corner of township one north, of range fourteen east; thence north on the range line to the northeast corner of township four north, of range fourteen east; thence west on the township line to the northwest corner of township four north, of range ten east; thence south on the range line to the place of beginning.

Sauk.

SEC. 24. The district of country included within the following boundaries shall form and constitute the county of Sauk, to wit:

Beginning at a point in the middle of the main channel of the Wisconsin river, on the range line between ranges two and three east, of the meridian aforesaid; running thence north on said range line to the southeast corner of township thirteen north, of range two east; thence west on the township line to the southwest corner of the last named township; thence north, on the range line between ranges one and two east, to the northwest corner of section nineteen, in township fifteen north, of range two east; thence east on the section lines to the middle of the Wisconsin river; thence down the middle of the main channel of said river until it intersects the range line between ranges seven and eight east; thence south on said range line until it strikes the middle of said river; thence down the middle of the main channel of said river to the place of beginning.

Sheboygan

SEC. 25. The district of country included within the following boundaries shall form and constitute the county of Sheboygan, to wit:

Beginning at the southwest corner of township thirteen north, of range twenty east, of the meridian aforesaid; running thence due east to the eastern boundary line of the state in Lake Michigan; thence northerly on said boundary line until it intersects a line running due east between townships sixteen and seventeen north; thence due west on said line to the northwest corner of township sixteen north, of range twenty east; thence south on the range line to the place of beginning.

St. Croix

SEC. 26. The district of country included within the following boundaries, shall form and constitute the county of St. Croix, to wit:

Beginning on the western boundary line of this state, opposite the mouth of Rush river; running thence due east to the range line between ranges fourteen and fifteen west; thence due north on said range line to the township line between townships thirty-one and thirty-two north; thence due east on said township line to the range line between ranges eleven and twelve west; thence due north on said range line to the township line between townships forty and forty-four north; thence due west to the western boundary line of this state; thence southerly along the said boundary line to the place of beginning.

Walworth.

SEC. 27. The district of country included within the following boundaries shall form and constitute the county of Walworth, to wit:

Beginning at the southwest corner of township one north of range fifteen east of the meridian aforesaid, in the southern boundary line of this State; running thence east, on said boundary line to the southeast corner of township one north, of range eighteen east; thence north, on the range line, to the northeast corner of township four north of range eighteen east; thence west on the township line to the northwest corner of township four north of range fifteen east; thence south on the range line to the place of beginning.

Washington.

SEC. 28 The district of country included within the following boundaries shall form and constitute the county of Washington, to wit:

Beginning at the southwest corner of township nine north, of range eighteen east of the meridian aforesaid; running thence due east to the eastern boundary line of this State in Lake Michigan; thence northerly on said boundary line until it intersects with a line running due east between townships twelve and thirteen north; thence west on said line to the northwest corner of township twelve north of range eighteen east; thence south, on the range lines between ranges seventeen and eighteen east, to the place of beginning.

Waukesha.

SEC. 29. The district of country included within the following boundaries shall form and constitute the county of Waukesha, to wit:

Beginning at the southwest corner of township five north, of range seventeen east of the meridian aforesaid; running thence east on the township line to the southeast corner of township five north, of range twenty east; thence north on the range line, to the northeast corner of township eight north, of range twenty east; thence west, on the township line, to the northwest corner of township eight north, of range seventeen east; thence south, on the range line, to the place of beginning.

Winnebago.

SEC. 30. The district of country included within the following boundaries shall form and constitute the county of Winnebago, to wit:

Beginning at the northeast corner of township twenty north, of range seventeen east of the meridian aforesaid; running thence due south through Lake Winnebago until it intersects a line running due east between townships sixteen and seventeen north; thence west on said line to the southwest corner of township seventeen north, of range fourteen east; thence north on the range line to the northwest corner of township twenty north, of range fourteen east; thence west, on the township line, to the range line between ranges nine and ten east; thence north on said range line to a point where Wolf river intersects said line; thence down the middle of said river until it intersects the township line between townships twenty and twenty-one north; thence east on said township line to the place of beginning.

County lines to run on lines of U. S survey.

SEC. 31. Whenever in this chapter the boundary line of any county is described as running north and south on any range line, or east or west on any township line, the said boundary line shall be deemed to run on such lines as established by the United States survey, making such offsetts, where said range and township lines are not continuous straight lines, as are made by such United States surveys.

Counties separated by river.

SEC. 32. Whenever two counties are separated from each other by a river or creek, the middle of the main channel of such river or creek shall be the division line between them, unless otherwise provided in the description of the boundaries of such counties.

CHAPTER 3.

OF CONGRESSIONAL DISTRICTS.

Three congressional districts.

SECTION 1. Until otherwise provided by law, the state shall be divided into three congressional districts, each of which shall be entitled to elect one representative in the congress of the United States.

SEC. 2. The counties of Milwaukee, Waukesha, Walworth and Racine shall constitute the first congressional district, and shall elect one representative.

SEC. 3. The counties of Rock, Green, La Fayette, Grant, Iowa, Dane, Sauk, Adams, Portage, Richland, Crawford, Chippewa, St. Croix, and La Pointe shall constitute the second congressional district, and shall elect one representative.

SEC. 4. The counties of Washington, Sheboygan, Manitowoc, Brown, Winnebago, Calumet, Fond du Lac, Marquette, Columbia, Dodge, and Jefferson shall constitute the third congressional district, and shall elect one representative.

CHAPTER 4.

OF THE CONSTRUCTION OF STATUTES.

Rules of construction of statutes.

SECTION 1. In the construction of the statutes of this state, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature; that is to say:

1. All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

2. Every word importing the singular number only, may extend and be applied to several persons or things, as well as to one person or thing; and every word importing the plural number only, may extend and be applied to one person or thing, as well as to several persons or things; and every word importing the masculine gender only, may extend and be applied to females as well as to males.

3. All words purporting to give a joint authority to three or more public officers, or other persons, shall be construed as giving such authority to a majority of such officers, or other persons, unless it shall be otherwise expresssly declared in the law giving the authority.

4. The word "grantor" may be construed as including every person from or by whom any freehold estate or interest passes, in or by any deed; and the word "grantee," as including every person to whom any such estate or interest passes in like manner.

5. The word "highway" may be construed to include any road laid out by the authority of the United States, of the territory of Wisconsin, or of this state, or of any county or town, and all bridges upon the same.

6. The word "inhabitant" shall be construed to mean a resident in the particular locality in reference to which that word is used.

7. The words "insane person" shall be construed to include every idiot, non-compos, lunatic, and distracted person.

8. The word "issue," as applied to the descent of estates, shall be construed to include all the lawful lineal descendants of the ancestor.

9. The words "land" or "lands," and the words "real estate," and "real property," shall be construed to include lands, tenements and hereditaments, and all rights thereto, and interests therein.

10. The word "month" shall be construed to mean a calendar month, unless otherwise expressed; and the word "year" a calendar year, unless otherwise expressed; and the word "year" alone, shall be equivalent to the expression "year of our Lord."

11. The word "oath" shall be construed to include "affirmations" in all cases where by law an affirmation may be substituted for an oath; and in the like cases the word "sworn" shall be construed to include the word "affirmed."

12. The word "person" may extend and be applied to bodies politic and corporate, as well as to individuals.

13. The words "preceding" and "following," when used by way of reference to any section of any statute of this state, shall be construed to mean the section next preceding, or next following

that in which such reference is made, unless when some other section is expressly designated in such reference.

14. The word "folio," wherever it occurs, shall be construed to mean one hundred words or figures.

15. The word "qualified," when applied to any person elected or appointed to office, shall mean the performance by such person of those things which are required by law to be performed by him, previous to his entering upon the duties of his office.

16. In all cases in which the seal of any court or public office shall be required by law to be affixed to any paper issuing from such court or office, the word "seal" shall be construed to include an impression of such official seal, made upon the paper alone, as well as an impression made by means of a wafer, or of wax affixed thereto.

17. The word "town" may be construed to include all cities, wards, or districts, unless such construction would be repugnant to the provisions of any act specially relating to the same.

18. The term "will" shall be construed to include codicils, as well as wills.

19. The words "written" and "in writing" may be construed to include printing, engraving, lithographing, and any other mode of representing words and letters; provided, however, that in all cases where the written signature of any person is required by law, it shall always be the proper handwriting of such person, or in case he is unable to write, his proper mark, or his name written by some person at his request and in his presence.

20. When a statute requires an act to be done, which may by law as well be done by an agent as by the principal, such requisition shall be construed to include all such acts when done by an authorized agent.

21. Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day when such statute shall take effect; and whenever the term "hereafter" occurs, it shall be construed to mean the time after the statute containing such term shall take effect.

22. The word "state," when applied to different parts of the United States, shall be construed to extend to and include the District of Columbia, and the several territories organized by congress; and the words "United States" shall be construed to include the said district and territories.

Sec. 2. All acts of incorporation shall be deemed public acts, and as such may be declared on, and given in evidence, without especially pleading the same.

Repeal of repealing act not to revive act repealed.

Sec. 3. No act, or part of an act, repealed by a subsequent act of the legislature, shall be deemed to be revived by the repeal of such repealing act.

Time when statutes to take effect.

Sec. 4. Every statute which does not expressly prescribe the time when it shall go into operation, shall take effect throughout the state on the twentieth day next after that on which it shall be approved by the governor, or otherwise become a law according to the provisions of the constitution; provided, that no general law shall be in force until published.

CHAPTER 5.

OF THE PUBLICATION AND DISTRIBUTION OF STATUTES.

Secretary of state to furnish copy of each general law for publication.

SECTION 1. The secretary of state, immediately after any general law of the legislature, shall have been deposited with him, shall furnish a copy thereof to the person authorised to print the laws, who shall immediately publish the same in a newspaper printed at the seat of government.

To furnish copy of all other laws, &c., within twenty days, and to make index and notes.

SEC. 2. It shall also be the duty of the secretary of state to furnish such printer, within twenty days after the adjournment of each session of the legislature, with a copy of all other laws not specified in the preceding section, and of all joint resolutions and memorials passed at such session; he shall also make out a full index and marginal notes to the laws as fast as such printer shall require the same, and shall see that the printing and binding of the laws are well executed.

Number of copies of session laws to be printed, and duty of secretary of state.

SEC. 3. There shall be printed four thousand copies of the laws passed at each session of the legislature, and as soon as the same are completed, the secretary of state shall carefully compare the printed with the enrolled acts, resolutions and memorials, and certify that he he has made such comparison, and found them correctly printed, except such errata as he may have discovered, which he shall specify; which certificate shall be dated and signed by the secretary, and annexed in print to the volumes of the acts, resolutions and memorials.

Laws of each session to be printed and delivered within sixty days.

SEC. 4. The laws passed at each session of the legislature, shall be printed and bound in strong paper binding, by the person authorised to print and bind the same, and delivered to the secretary of state within sixty days after the adjournment of the session of the legislature at which the same were enacted; and in case of failure, to make such delivery as above specified, such person shall forfeit five dollars for each day he shall delay such delivery beyond the sixty days, to be deducted from his compensation for such work.

Distribution of session laws by secretary of state.

SEC. 5. The secretary of state shall dispose of the laws passed at each session of the legislature, immediately after their publication in volumes, as follows:

1. He shall deposit thirty copies thereof in the state library, to be preserved therein; and retain one copy for the use of his office;

2. He shall distribute to the governor, lieutenant governor, state treasurer, attorney-general, adjutant-general, state superintendent, each judge of the circuit court in this state, the clerks of the supreme court, the secretary of state of the United States, the library of congress, the judge of the district court of the United States for the district of Wisconsin, the United States district attorney in this state, the clerk of said last named court, and to the library of the University of Wisconsin, and of each branch thereof, one copy each;

3. To the governor of each state and territory of the United States, free of expense to the same, two copies accompanied with a

request of a similar communication to be made to the governor of this state, of the laws of the respective states and territories:

4. To the register of deeds of each county a sufficient number of copies to be distributed by him to each of the following officers in his county, allowing one for each, namely: the judge of the county court, members of the legislature, district attorney, clerk of the circuit court, clerk of the board of supervisors, county treasurer, sheriff, coroner, and the justices of the peace, town clerks, and town superintendents of common schools in each town; and said register of deeds shall retain one copy for his office; but no person who shall hold more than one office, shall be entitled to more than one copy.

Registers of deeds to furnish secretary with number of officers entitled to copy of laws.

SEC. 6. The register of deeds in each county, within one month after the adjournment of the legislature in each year, shall forward to the secretary of state, a statement of the number of officers, persons, and corporations in his county, entitled by law to a copy of the laws of the last preceding session of the legislature; and as soon as the same are ready for distribution, the secretary of state shall, at his office deliver to such register, or to his order, properly packed, the number of copies set forth in such statement, including a copy of the laws and of the journals of the preceding session, for each member of the legislature residing in the county, and take a receipt therefor; and all expenses for transporting the laws to any county, shall be paid out of the county treasury.

Secretary to deliver laws to registers; expenses of transportation, how paid.

Name of office to be on copy, to be delivered over to successor, and receipt taken, &c.

SEC. 7. The copy of the laws delivered to any person, on account of any office held by him, shall have stamped or written thereon, the name of the office held by such person, and he shall, when he ceases to hold such office, deliver over to his successor in office all laws received by him as such officer, and take the receipt of his successor therefor, and deposit such receipt, if a town officer, with the town clerk, and if a county officer, with the register of deeds; and any person who shall neglect or refuse to deliver over to his successor in office, all laws received by him as aforesaid, shall be liable to such successor in an action of replevin for the same, or for money had and received, to the full amount it shall or would cost him to furnish himself with such laws, and costs of suit; which action shall, on request, be brought and prosecuted by the district attorney of the county; but no person, while he continues to hold any office which would entitle him to such laws, shall be required to return the same as aforesaid.

Penalty for neglect, or refusal to deliver.

Remaining copies to be sold, reserving thirty for state library

SEC. 8. The copies of the laws remaining after the distribution as provided in the fifth section of this chapter, shall be deposited in the state library, and the librarian is authorized to sell to any individual, a copy of the same at five per cent advance upon cost, but he shall in all cases retain thirty copies of the laws of each session in the state library.

Provisions of this chapter not to apply to Revised Statutes.

SEC. 9. Nothing in this chapter contained shall be construed as applying to the Revised Statutes of this State.

TITLE II.

OF ELECTIONS OTHER THAN FOR TOWN OFFICERS.

CHAPTER 6. Of general and special elections; of the manner of conducting the same, and of the canvass.
7. Of the election of representatives in congress, electors of president and vice-president, and senators in congress.

CHAPTER 6.

OF GENERAL AND SPECIAL ELECTIONS; OF THE MANNER OF CONDUCTING THE SAME, AND OF THE CANVASS.

SECTION 1. Qualifications and disabilities of electors.
3. General elections.
4. Special elections.
10. Notifying elections.
20. Manner of conducting general elections.
43. Canvass by the inspectors.
51. County canvass and proceedings thereon.
62. District canvass.
69. State canvass.
85. Miscellaneous provisions.

Qualifications and disabilities of electors.

Who are qualified voters.

SECTION 1. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state for one year next preceding any election, shall be deemed a qualified voter at such election:

1. White citizens of the United States;
2. White persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization;
3. Persons of Indian blood, who have once been declared by law of congress to be citizens of the United States, any subsequent law of congress to the contrary notwithstanding;
4. Civilized persons of Indian descent, not members of any tribe.

Who not qualified or permitted to vote.

SEC. 2. No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election; nor shall any person convicted of treason, felony, or bribery, unless restored to civil rights; nor shall any person who, being an inhabitant of this state, may hereafter be engaged, directly or indirectly, in a duel, either as principal or accessory, be permitted to vote at any election; nor shall any person who shall have made or become directly or indirectly interested in any bet or wager, depending upon the result of any election at which he shall offer to vote, be permited to vote at such election.

General Elections.

General election, and what officers elected thereat.

SEC. 3. A general election shall be held in the several towns and wards in this state, on the Tuesday next succeeding the first Monday in November in each year, at which there shall be chosen so many of the following officers as are by law to be elected in such year, that is to say, a governor, lieutenant governor, secretary of state, treasurer, attorney general, state superintendent, senators, members of assembly, representatives in congress, electors of president and vice president, and the following county officers, to wit: Clerks of the circuit courts, sheriffs, registers of deeds, district attornies, clerks of the boards of supervisors, county treasurers and coroners, and all other state and county officers not herein enumerated, or otherwise provided for.

Special Elections.

Special elections, when held.

SEC 4. Special elections may be held in the following cases, and for the election of the following officers:

1. When there has been no choice at a general election of a representative in congress, senator, member of assembly, or of any county officer who should properly have been chosen at such general election;

2. When the right of office of a person elected to the office of senator, member of assembly, or to either of the said county offices, shall cease before the commencement of the term of service for which he shall have been elected;

3. When a vacancy shall occur in either of the said county offices, except in those of county treasurer, clerk of the circuit court, and clerk of the board of supervisors, after the commencement of the term of service, and more than three months before the next general election;

4. When a vacancy occurs in the office of senator or member of assembly, after the last day of December in any year, and before the first day of February next following;

5. If a vacancy proper to be supplied at a general election shall not have been supplied at the general election next succeeding the happening thereof, a special election to supply such vacancy shall then be held;

6. When in any other case of a vacancy, not particularly provided for in this section, the governor shall in his discretion direct.

Notifying Elec'ions.

Vacancies may be supplied at general election; when governor and lieutenant governor to be chosen.

SEC. 5. A vacancy in either of the offices named in the third section of this chapter, which shall not have been supplied by an election before the general election next succeeding the happening thereof, may be supplied at such election; but no election shall take place for governor or lieutenant governor except at the general election held in the last year of their constitutional term of office.

Special elections, how conducted and when held.

SEC. 6. Special elections shall be conducted, and the result thereof canvassed, and certified in all respects, as near as practicable, in like manner as general elections, except as otherwise directed; and no special election shall be held within thirty days next preceding a general election.

Elections where held.

SEC. 7. All general and special elections shall be held at the place in each town where the last town meeting was held, or at such other place therein as shall have been ordered at a previous town meeting, or when there has been no such previous meeting, then at such place as shall be directed in the act or proceeding by which the town was organized; but nothing in this section contained shall prevent the holding of two or more polls in one town, when the same shall be ordered by the inspectors of election, as hereinafter provided.

When place of holding may be adjourned.

SEC. 8. Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the board of inspectors, after having assembled at, or as near as practicable to such place, and before receiving any votes, may adjourn to the nearest convenient place for holding the election, and at such adjourned place forthwith proceed with the election.

Proclamation to be made, &c.

SEC. 9. Upon adjourning any election, as provided in the preceding election, the board of inspectors shall cause proclamation thereof to be made, and shall station a constable, or some other proper person, at the place where the adjournment was made, to notify all electors arriving at such place of the adjournment, and the place to which it was made.

Notifying Elections.

Notice of general elections to be given by secretary.

SEC. 10. The secretary of state shall, between the first day of July and the first day of September in each year in which a governor, lieutenant governor, secretary of state, treasurer, attorney general, and state superintendent, or representatives in congress, are to be elected for a full term of office, or in which electors of president and vice president are to he elected, make out and cause to be delivered to the sheriff of each county a notice in writing, stating that at the next general election the aforementioned state officers, and electors of president and vice president, and a representative in congress for the district to which such county shall belong, are to be elected, or so many of such officers as are then to be chosen.

Ib. of special elections.

SEC. 11. If any vacancy shall exist in the offices either of secretary of state, treasurer, attorney general, state superintendent, state senator, or representative in congress, proper to he supplied at the ensuing general election, one month before such election, the secretary of state, or in case of a vacancy in such office, then the person officiating as such, shall, thirty days at least before such election, give notice in writing to the sheriff of each county in the state, when the vacancy is in a state office; or in case of such vacancy in a district, then to the sheriff of each county therein, specifying the cause of such vacancy, the name of the officer in whose office it occurred, and the time when his term of office will expire.

Secretary to notify sheriffs of vacancy in office of senator.

SEC. 12. The secretary of state shall, between the first day of July and the first day of September in each year in which the term of office of any state senator in any district will expire, make out and cause to be delivered to the sheriff of the county comprising such district, or to the sheriff of each county which shall form a part thereof, a notice in writing, specifying the number of the district, and the name of the senator whose term of service will so expire, and whose successor is to be elected at the next general election.

Publication of notices and writs of election by secretary.

SEC. 13. The secretary of state shall cause a copy of each notice issued by him, and of each writ of election issued by the governor for a special election, to be published in a paper printed at the seat of government, once in each week from the date of such notice or writ, until the election to which it shall refer.

Special elections for county officers, to be ordered by sheriff.

SEC. 14. All special elections for county officers, and the filling of all vacancies in county offices at a general election, shall be ordered by the sheriff of the county, which order shall be countersigned by the clerk of the board of supervisors; in all other cases of special elections, they shall be ordered by the governor.

Orders and writs for elections, what to specify, and to whom delivered.

SEC. 15. Every order or writ, issued for a special election, shall specify the county or district in which such election is to be held, how the vacancy occurred, the name of the officer in whose office it occurred, the time when his term of office will expire, and the day on which such election is to be held; which shall not be less than twenty, nor more than forty days from the date of the order or writ; and the same shall be forthwith delivered to the sheriff of the county, or in case of vacancy in a district composed of more than one county, then to the sheriff of each county in such district.

Duty of sheriff on receiving notices

SEC. 16. The sheriff, on receiving either of the notices, directed in this chapter to be sent to him, shall forthwith cause a notice in writing to be delivered to the town clerk of each town, and to one of the inspectors of election in each ward in any city of his county; or if the vacancy be in an assembly or senate district within his county, then such notice shall be delivered to such officer in each town or ward in such district; which notice shall contain in substance the notices so received by such sheriff.

Duty of town clerk and inspectors previous to general elections, and on receiving notices

SEC. 17. The town clerk of every town or inspectors in any ward of any city, ten days previous to any general election, or on receiving either of the notices directed in this chapter to be delivered to him, shall give notice in writing under his hand to the electors of his town or ward of the time and place at which such election is to be held, and of the officers to be chosen; and if the notice is for a general election, it shall state whether any of the officers then to be chosen are to fill vacancies, and the names of the last incumbents of the offices in which vacancies exist; and such town clerk or inspectors shall cause such notices to be posted up conspicuously in at least five of the most public places in his town or ward.

When office of sheriff vacant, clerk of supervisors to act.

SEC. 18. Whenever in any county the office of sheriff shall be vacant, and there shall be no person therein authorised to perform his duties, the clerk of the board of supervisors of such county shall receive and make out and deliver the notices of election, in this chapter required to be received, made out and delivered by such sheriff.

If vacancy in the office of senator

SEC. 19. Whenever a vacancy shall occur in the offices either of state senator or member of assembly, otherwise than by resignation, it shall be the duty of the clerk of the board of supervisors of the county in which the senator or member of assembly whose office is vacant shall have resided at the time of his election, to transmit without delay, a notice of such vacancy to the governor.

or member of assembly, duty of clerk of supervisors.

Manner of Conducting General Elections.

Supervisors and aldermen to be inspectors of election.

SEC. 20. The supervisors of each town shall be the inspectors of elections in such town, and the aldermen in each ward of any city, shall be the inspectors of election in such ward.

In case of absence, electors to choose inspectors.

SEC. 21. In case of the death, absence, or refusal to act, of any or all of the inspectors, the electors present may choose viva voce, from the qualified electors of the town or ward, such number, as together with the inspector or inspectors present, if any, will constitute a board of three, and the persons so chosen shall be authorized to act as inspectors at that election.

Town clerk to act as clerk of the polls, and inspectors to appoint one or more other clerks.

SEC. 22. The town clerk, if present, shall act as clerk of the election, and before the opening of the polls, the inspectors at each poll shall appoint another competent person to be clerk of the election; and if the town clerk be absent, the board shall appoint two such clerks; the inspectors in each ward in any city shall appoint two clerks of election; but no person shall act as clerk of the election who is not a qualified elector of the town or ward in which he is appointed.

Inspectors may designate other places for holding polls.

SEC. 23. Whenever, in the opinion of the inspectors of election of any town, more than one election poll will be necessary for the convenience of the electors at any general or special election, they are hereby authorized to designate a place or places where another or other polls shall be held, giving at least eight days notice thereof, by posting up notices in five of the most public places in such town; at which place or places so designated, the inspectors and clerks of such poll or polls shall be chosen, as provided in the two last preceding sections, and they shall be authorized to act as inspectors and clerks of such election.

Chairman of the election.

SEC. 24. Whenever the chairman of the town board of supervisors is present, he shall be chairman of the election board; but if he be absent, such one of their number as the inspectors shall appoint shall be chairman of the board.

Inspectors and clerk to take oath, and same to be annexed to poll book.

SEC. 25. Previous to receiving any votes, the inspectors and clerks of election shall severally take an oath, or affirmation, that they will support the constitution of the United States, and the constitution of the state of Wisconsin, and will perform the duties of inspector, (or clerk, as the case may be,) of election according to law, and will studiously endeavor to prevent all fraud, deceit, or abuse, in conducting the same. Said oath or affirmation shall be in writing, shall be subscribed by the persons taking the same, and may be administered by any person authorized to administer oaths, or by either of said inspectors; and shall be annexed to and returned with the poll book to the clerk of the board of supervisors.

Polls, when opened and closed.

SEC. 26. The polls of the election shall be opened at nine o'clock in the forenoon, or as soon thereafter as may be, on the day of election, and shall be kept open until sundown in the afternoon of the same day; but the board may adjourn the polls at twelve o'clock noon, for one hour.

Proclamation to be made, and notice of adjournment to be given

SEC. 27. The inspectors shall cause proclamation to be made of the opening and closing of the polls, and of each adjournment; and at the opening of the polls in the forenoon, the inspectors shall give notice thereof, if any adjournment is to take place.

Electors to vote in town or ward where they reside, and what ballot to contain.

SEC 28. Every elector shall vote by ballot, in the town or ward where he resides at the time of the election, and each person offering to vote shall deliver his ballot to one of the inspectors, in presence of the board; the ballot shall be a paper ticket, which shall contain, written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote, and shall designate the office to which each person so named is intended by him to be chosen; but no ballot shall contain a greater number of names of persons designated to any office than there are persons to be chosen at the election to fill such office.

All the names to be on one ballot

SEC. 29. The names of all the persons voted for by any elector, at any general or special election, shall be on one ballot.

When two members of congress to be elected, how ballots shall designate each.

SEC. 30. If at a general election, there shall be a vacancy to be supplied in the office of representative to congress, and at the same election a representative to congress is to be elected for a full term, the ballots shall designate the congress for which each person is intended to be chosen.

Challenge.

SEC. 31. If any person offering to vote shall be challenged as unqualified, by an inspector, or by any other person entitled to vote at the same poll, the board of inspectors shall declare to the person so challenged, the qualifications of an elector. If such person shall state himself duly qualified, and the challenge shall not be withdrawn, one of the inspectors shall then tender to him the following oath:

Oath.

"You do solemnly swear, (or affirm, as the case may be,) that you are twenty-one years of age; that you are a citizen of the United States, (or that you have declared your intention to become a citizen, conformably to the laws of the United States on the subject of naturalization); that you have resided in this state one year next preceding this election; that you are now a resident of this town, (or ward, as the case may be); that you have not voted at this election, and that you have not made any bet or wager, or become directly or indirectly interested in any bet or wager depending upon the result of this election."

And if any person so challenged, shall refuse to take the oath so tendered, his vote shall be rejected.

If oath taken, vote to be received.

SEC. 32. If any person so offering to vote shall take such oath, his vote shall be received.

Ballot box to be provided.

SEC. 33. There shall be provided and kept by the town clerk of each town, at the expense of such town, and by the aldermen of each ward in any city at the expense of such city, a suitable ballot box with a lock and key.

Opening in same

SEC. 34. There shall be an opening through the lid of such box, of no larger size than shall be sufficient to admit a single closed ballot.

To be examined and locked.

SEC. 35. Before opening the polls, the ballot box shall be carefully examined that nothing may remain therein; it shall then be locked, and the key thereof delivered to one of the inspectors to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

Ballots not to be opened or examined.

SEC. 36. When a ballot shall be received, one of the inspectors, without opening the same, or permitting it to be opened or examined, shall deposit it in the box.

Each clerk to keep poll list.

SEC. 37. Each clerk shall keep a poll list, which shall contain the names of all the persons voting at such election.

To compare and correct same at each adjournment.

SEC. 38. At each adjournment of the poll, the clerks shall, in the presence of the inspectors, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered according to the decision of the board, until such poll lists shall be made in all respects to correspond.

Box, lists and key, how kept.

SEC. 39. The ballot box shall then be opened, and the poll lists placed therein, and such box shall then be locked, and a covering with a seal placed on the opening in the lid of such box, so as entirely to cover the same, and the key delivered to one of the inspectors, and the box to another, to be designated by the board.

Key and box, by whom kept and to whom returned.

SEC. 40. The inspector having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the poll; and the inspector having the box shall carefully keep it without opening, or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly deliver it in that condition to the board of inspectors at the next opening of the poll, when the seal shall be broken, the box opened, the poll lists taken out, and the box again locked.

Inspectors to challenge and maintain order.

SEC. 41. It shall be the duty of each inspector to challenge every person offering to vote, whom he shall know or suspect not to be duly qualified as an elector; and the board of inspectors shall possess full authority to maintain regularity and order, and to enforce obedience to their lawful commands, during an election, and during the canvass and estimate of the votes.

Disorderly persons to be taken into custody.

SEC. 42. If any person shall refuse to obey the lawful commands of the inspectors, or by disorderly conduct in their presence or hearing, shall interrupt or disturb their proceedings, they may order any constable or other person to take him into custody during the election.

Canvass by the Inspectors.

Canvass when to be made, to be public, and without adjournment.

SEC. 43. As soon as the poll of the election shall be finally closed, the inspectors shall immediately proceed to canvass the votes given at such election; and the canvass shall be public, and continued without adjournment until completed.

Canvass, how to be conducted

SEC. 44. The canvass shall commence by a comparison of the poll lists from the commencement and a correction of any mistakes that may be found therein, until they shall be found or made to agree. The box shall then be opened, and the ballots contained therein taken out and counted by the inspectors unopened, except so far as to ascertain whether each ballot is single, and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed; and if, upon a comparison of the count and the appearance of such ballots, a majority of the board shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed.

Excess of ballots to be destroyed.

SEC. 45. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, and one of the inspectors shall publicly draw out and destroy therefrom so many ballots unopened, as shall be equal to such excess.

Board to count the votes.

SEC. 46. The ballots and poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes.

Statement of result to be made in writing.

SEC. 47. The canvass being completed, the inspectors shall draw up a statement of the result in writing, and cause a duplicate thereof to be made; which statement and duplicate they shall certify to be correct, and subscribe with their names.

What to contain.

SEC. 48. Such statement shall set forth in words at length, the whole number of votes given for each office at such election, the names of the persons for whom such votes were given, and the number of votes so given for each person.

Statements to be delivered to town clerk and chairman of supervisors.

SEC. 49. One of said statements shall forthwith be delivered to the town clerk, to be filed and preserved by him, or if made in any ward of a city, then to the clerk of such city for the like purpose; and the other, together with one of the poll lists, shall be carefully enclosed, sealed up, and directed to the clerk of the board of supervisors of the proper county, and delivered to the chairman of the supervisors of the town, or such one of said supervisors as shall attend the next annual meeting of the county board of supervisors; and such officer to whom such statement and poll list shall be so delivered, shall within seven days after the election, deliver the same, with the seals and envelopes unbroken, to such clerk, without charge for mileage, when they receive pay for mileage as members of the county board.

Supervisor to deliver same to clerk of the board.

Rejected ballots to be preserved and the others destroyed.

SEC. 50. The inspectors shall carefully envelope and preserve all ballots rejected as defective, and deliver the same, together with the other poll list, to the town or city clerk, as the case may be, to be filed in his office; all the other ballots shall then be destroyed, and the board of inspectors shall be dissolved.

County Canvass, and proceedings thereon.

County canvass when to be made and by whom.

SEC. 51. On the Tuesday next following the election, the clerk of the board of supervisors shall take to his assistance two justices of the peace of his county, who, together with such clerk, shall constitute the county board of canvassers, and proceed to open said returns, and make an estimate and statement of the votes, as follows:

Separate statements of the votes given to be made.

They shall make a separate statement, written out in words at length, containing the whole number of votes given in such county for the offices of governor, lieutenant governor, secretary of state, treasurer, attorney general, state superintendent, and representative in congress; the names of the persons to whom such votes were given, and the number of votes given to each; another similar statement of the votes given for electors of president and vice president; another, of the votes given for senator, when the county alone does not constitute a senate district; another, of the votes given for members of assembly, when the county alone does not constitute an assembly district; another, of the votes given for county officers; and another, of the votes given for senators and members of assembly, when the county constitutes one or more senate or assembly districts, specifying the number of votes for each person for senator and member of assembly in each such district respectively.

Same to be certified and signed by board, and filed and recorded.

SEC. 52. Each statement shall be certified as correct, and attested by the signatures of the said county board of canvassers, and filed in the office of the clerk of the board of supervisors, and the same shall be recorded by him in a suitable book to be provided and kept in his office.

Board to determine who are elected county officers, &c.; their certificate to be filed and recorded.

SEC. 53. They shall then determine the persons who have been by the greatest number of votes, elected to the several county offices, and members of the senate and assembly, when the county constitutes one or more senate or assembly districts; and such determination shall be reduced to writing, certified as correct, and attested by the signatures of the said clerk and justices, and be annexed to the statement of votes given for such officers respectively, and filed and recorded by said clerk with the same.

Certificates of election to be made and delivered by clerk.

SEC. 54. The said clerk shall immediately make out, in pursuance of the determination of such board of canvassers, a certificate of election for each person having the greatest number of votes for any county office, or for member of the senate or assembly, when the county constitutes one or more senate or assembly districts, and deliver the same to such person upon his making application therefor.

Duplicate statements of votes for senator and member of assembly when to be made.

SEC. 55. The said board shall, without delay, make a duplicate statement of the votes given for senator, when the county does not alone constitute a senate district, and deliver the same to the clerk of the board of supervisors of the county, to be by him delivered to the senatorial district canvassers; said board shall also make a duplicate statement of the votes given for member of the assembly, when the county does not alone constitute an assembly district, and deliver the same to the said clerk, to be by him delivered to the assembly district canvassers.

Copies of statement of votes for state officers to be made and sent by clerk.

SEC. 56. Of the statement and certificate of the votes given for the offices of governor, lieutenant governor, secretary of state, treasurer, attorney general, state superintendent, and representative in congress, or either of them, the clerk of the board of supervisors shall prepare three certified copies under his signature and sealed with his seal of office. Of these copies, he shall, within three days next after the county canvass, send by mail one to the governor, one to the secretary of state, and one to the state treasurer.

Clerk to transmit names of members, and of county officers to secretary.

SEC. 57. He shall also transmit by mail to the secretary of state, within thirty days after any general election, a list of the names of the persons elected in the county as members of the senate and assembly; and also a list of all the county officers elected in such county at such election.

To make and transmit three copies of statement of votes given for electors.

Sec. 58. The clerk of the board of supervisors of each county, immediately after he shall receive from the board of county canvassers a certified statement of the votes given for electors of president and vice president, shall make out three copies thereof, certified under his hand and seal of office to be correct, and shall forthwith send by mail one of such copies to the governor, one to the secretary of state, and the other to the state treasurer.

Vote on amendment of constitution how to be taken, certified and returned.

Sec. 59. Whenever any amendment shall have been proposed to the constitution of this state, and agreed to, and submitted to the people, pursuant to the provisions of the first section of the twelfth article of the constitution, if the vote thereon shall be required to be taken at the general election, the votes of the electors for and against such amendment shall be taken, canvassed, certified and recorded, and certified copies of the statements thereof shall be made and transmitted by the clerks of the boards of supervisors in the several counties, to the governor, secretary of state, and treasurer, at the same time, and in the same manner as the votes for state officers are by law to be taken, canvassed, certified, and recorded, and statements thereof are to be certified and transmitted.

When vacancy in office of clerk of supervisors, or his inability to serve, who to act.

Sec. 60. In case of vacancy in the office of clerk of the board of supervisors in any county, or when, in case of absence, sickness, or other inability, such clerk cannot perform any of the duties required to be performed by him in this chapter, then the clerk of the circuit court in such county, or if there be no such clerk, or if he be unable to perform such duties, then the chairman of the board of county supervisors, of such county, shall perform the duties so required to be performed by the clerk of the board of supervisors, and shall be subject to the same penalties for any violation of such duties as said clerk.

County canvass may be adjourned.

Sec. 61. If on the day appointed for the county canvass, there should fail to be a full attendance of the board, the same may be adjourned until the next day, when the canvass shall proceed.

District Canvass.

Board of district canvassers.

Sec. 62. In each senate and assembly district, the limits of which shall be greater than those of a county, there shall be a board of district canvassers, and the clerks of the several boards of supervisors in the counties within the district, and the chairman of the county board of supervisors, in the county where the meetings of the board are to be held, shall constitute such board.

Three a quorum, and if a deficiency, how quorum formed.

Sec. 63. Any three of such canvassers shall be a quorum for the transaction of the business of said board; and in case there shall not be three of the members of such board present at any such meeting, the judge of probate or register of deeds of the county where any such meeting is to be held, or both of them, may act as members of such board, so as to constitute a board of not less than three in number.

When and where district boards to meet.

Sec. 64. The board shall meet, in each such assembly district, on the second Tuesday next after the day on which the county canvass is required to be made; and in each such senate district, on the third Tuesday next after the county canvass, at the office of the clerk of the board of supervisors of the county in such district having the greatest number of inhabitants, according to the last preceding census.

If clerks of boards unable to attend, to forward statement of votes.

SEC. 65. If any one of the clerks of the boards of supervisors shall be unable to attend such canvass on the day appointed therefor, he shall, on or before that day, cause to be delivered at the office of the clerk of the board of supervisors of the county in which such meeting is to be held, the certified statement of votes given in his county for the officers to be elected in such district; which statement shall be laid before said board.

Duty of district canvassers.

SEC. 66. The canvassers shall, at the time and place appointed, proceed to examine the statements of the votes given in the several counties in the district, and ascertain and determine what person or persons have been elected, and shall draw up a statement thereof in words at length, which statement shall contain the whole number of votes given, the names of the candidates, and the number of votes given to each; and such statement shall be certified to be correct, and be subscribed by the said canvassers.

Ib.

SEC. 67. The canvassers shall then determine the person or persons elected to office within the district, as shall appear by such statements, and shall certify such determination under their hands, and annex the same to their said statement, and deliver the same to the clerk of the board of supervisors of the county in which their meeting shall be held, who shall file the same in his office.

Clerk of board of supervisors to transmit names of persons elected, and to issue certificates of election.

SEC. 68. The clerk of the board of supervisors, by whom the said statement and certificate thereto annexed shall be filed, shall, without delay, transmit by mail to the secretary of state the name or names of the person or persons elected; and he shall also, without delay, make out and cause to be transmitted to each person elected, a certificate of his election.

State Canvass.

Board of state canvassers.

SEC. 69. The secretary of state, state treasurer, and attorney general, shall constitute the board of state canvassers, two of whom shall be a quorum for the transaction of business; and if one only of said officers shall attend on the day appointed for a meeting of the board, the clerk of the supreme court resident at Madison, on being notified by the officer so attending, shall attend without delay with such officer, and with him shall form the board.

Secretary of state to record certified statements, &c

SEC. 70. The secretary of state, upon the receipt of the certified statements of the votes given in the several counties, directed to be sent to him by the clerks of the boards of supervisors, shall record the same in a suitable book to be kept by him for that purpose; and if from any county no such statement shall have been received by him, he shall obtain the same from the governor, or state treasurer, if received by either of them, and when obtained, record the same in like manner.

May send special messenger when statement not received.

SEC. 71. If from any county no such statement shall have been received or obtained by the secretary of state, within thirty days next after any election, he may dispatch a special messenger to obtain such statement from the clerk of the board of supervisors of such county; and such clerk shall immediately, on the demand of such messenger, make out and deliver to him the statement required, which statement the messenger shall deliver to the secretary of state, as soon as may be, to be recorded by him as aforesaid.

When to appoint meeting of state canvassers.

SEC. 72. For the purpose of canvassing and ascertaining the result of elections other than for electors of president and vice president, the secretary of state shall appoint a meeting of the state canvassers, to be held at his office, on or before the fifteenth day of December next after a general election, and within forty days after a special election, and shall notify the other members of the board of the same.

Board to examine and make statement of the votes given, &c

SEC. 73. The board when thus formed shall, upon the certified statements of elections made by the boards of county canvassers, proceed to examine and make a statement of the whole number of votes given at any such election for the offices of governor and lieutenant governor, secretary of state, treasurer, attorney general and state superintendent, or either of them; and another statement of the votes given for representative in congress in each congressional district; each of which statements shall show the names of the persons to whom such votes shall have been given for either of the said offices, and the whole number of votes given to each; distinguishing the several districts and counties in which they were given.

To certify statement, and determine who is elected.

SEC. 74. They shall certify such statements to be correct, and subscribe their names thereto, and they shall thereupon determine what persons have been by the greatest number of votes duly elected to such offices or either of them, and shall make and subscribe on each statement a certificate of such determination, and deliver the same to the secretary of state.

Board may adjourn

SEC. 75. The said board of canvassers, when organized, shall have power to adjourn from day to day, for a term not exceeding three days.

Secretary to record statement and determination, and issue certificates of election, &c.

SEC. 76. The secretary of state shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination so made by the board of state canvassers, and shall without delay, make out and transmit to each of the persons thereby declared to be elected, a certificate of his election, certified by him under his seal of office; he shall also forthwith cause a copy of such certified statements and determinations to be published in a newspaper printed at the seat of government.

To transmit certificate of election of members of congress to House of Representatives.

SEC. 77. He shall prepare a certificate under the great seal of the state, attested by him as secretary and addressed to the House of Representatives of the United States, in that congress for which any persons shall have been chosen, of the due election of such persons so chosen as representatives of this state in congress; and shall transmit the same to the said House of Representatives at their first meeting; and if any of the persons so chosen at such election, shall have been elected to supply a vacancy in the office of representative in congress, it shall be mentioned by the secretary in such certificate.

Governor may appoint messenger to obtain votes given for electors.

SEC. 78. Whenever in the opinion of the governor the statement of votes given for electors of president and vice president will not be received from any county before the time fixed for canvassing such votes, he shall appoint a special messenger to obtain such statement from the clerk of the board of supervisors of such county; and such clerk shall immediately on the demand of such messenger, make out and deliver to him the statement required, which statement the messenger shall deliver to the secretary of state, as soon as possible, to be recorded by him.

When board of state canvassers to meet to ascertain votes given for electors.

Sec. 79. For the purpose of canvassing and ascertaining the votes given for electors of president and vice president, said board shall meet at the office of the secretary of state, on the Tuesday next after the fourth Monday of November in the year such electors shall be chosen, or sooner, if certified copies of the statements of the votes shall have been received from all the counties; and in case all the said copies of statements shall not have been received on the day above specified, the board may adjourn from day to day until the same shall be received, not exceeding three days.

Duties of the board and the secretary.

Sec. 80. The board shall proceed in examining and making a statement of the votes, and determining and certifying the persons chosen as electors, in the manner prescribed by law to be pursued by them in the canvass of state officers, and the duties of the secretary of state in recording the statements and determinations of the board shall be the same as in that case.

Secretary to certify and transmit determination of board, and may employ special messenger.

Sec. 81. The secretary of state shall without delay cause a copy, under his hand and seal of office, of the certified determination of the board of state canvassers, declaring the persons elected as such electors, to be transmitted and delivered to each of the persons so declared to be elected; and whenever necessary, may employ special messengers for that purpose.

Vote on proposed amendment to constitution when to be canvassed, &c.

Sec. 82. For the purpose of canvassing and ascertaining the result of the vote taken at any general election, upon any proposed amendment to the constitution, the secretary of state shall appoint a meeting of the state canvassers to be held at his office, on or before the fifteenth day of December next after such vote is taken; at which meeting the said secretary shall lay before the board, the statements received by him of the votes given in the several counties for and against such amendment.

How board to proceed, and to certify their determination.

Sec. 83. The board shall then proceed to examine such statements, and to ascertain and determine the result, and shall make and certify under their hands a statement of the whole number of votes given for, and the whole number of votes given against such amendment; and they shall thereupon determine whether such amendment has been approved and ratified by a majority of the electors voting thereon, and shall make and subscribe on such statement a certificate of such determination.

Secretary to record determination, and if amendment approved, to bind and publish same with laws.

Sec. 84. The secretary of state shall record in his office, in a book to be kept by him for that purpose, such certified statement and determination; and if it shall appear that such amendment has been approved and ratified as aforesaid, he shall also make a record thereof, and cause such record to be bound in the volume containing the original enrolled laws passed at the next succeeding session of the legislature, and cause such record to be published with such laws.

CHAPTER 6.

Miscellaneous Provisions.

State and county officers when to be elected.

SEC. 85. The governor, lieutenant governor, secretary of state, state treasurer, attorney general, and state superintendent, shall be chosen at the general election in the year one thousand eight hundred and forty-nine, and biennially thereafter; and all county officers authorized by law to be elected in any county now organized in this state, shall, unless otherwise specially provided, be chosen at the general election in the year one thousand eight hundred and fifty, and at the general election in every second year hereafter.

When and how vacancies may be filled.

SEC. 86. All vacancies in the offices mentioned in the preceding section, except the offices of governor and lieutenant governor, may be filled at a general or special election, or by appointment, as provided by law.

Term of state and county officers when to commence.

SEC. 87. The regular term of office of all state and county officers, when elected for a full term, shall commence on the first day of January next succeeding their election.

If elected or appointed to fill vacancies, when may enter upon their duties, and how long to hold

SEC. 88. Any of the said officers that may be elected or appointed to fill vacancies, may qualify and enter upon the duties of their offices immediately thereafter; and when elected, they may hold the same during the unexpired term for which they were elected, and until their successors are elected and qualified; but if appointed, they shall hold the same only until their successors are elected and qualified.

No civil process to be served on elector during election day.

SEC. 89. During the day on which any general, special, town, or charter election shall be held, no civil process shall be served on any elector entitled to vote at such election.

Person having highest number of votes elected.

SEC. 90 In all elections for the choice of any officer, unless it is otherwise expressly provided, the person having the highest number of votes for any office, shall be deemed to have been elected to that office.

Compensation of clerks and inspectors.

SEC. 91. In all elections held under the provisions of this chapter, the inspectors and clerks of election in each town and ward, shall be allowed a reasonable compensation for their services at such elections, to be paid by such town or ward.

Same of county canvassers and clerks of boards of supervisors.

SEC. 92. Each county canvasser and clerk of the board of supervisors shall receive such reasonable compensation for his services while employed in the county canvass, or any duties relating thereto, as shall be allowed by the board of supervisors of his county, to be paid out of the county treasury.

Same of district canvassers, &c

SEC. 93. Each district canvasser, clerk of the board of supervisors, or other persons, lawfully employed in canvassing and returning the result of elections in senate and assembly districts, or performing any other duties relating to the district canvass, shall receive such reasonable compensation as the board of supervisors of his county shall allow, to be paid out of the county treasury.

Same of messengers.

SEC. 94. Every messenger appointed by the governor or secretary of state, pursuant to any provisions of this chapter, shall receive such reasonable compensation for his services as shall be allowed pursuant to law, to be paid out of the state treasury.

Certificate of election to be de-

SEC. 95. Whenever it shall satisfactorily appear that any person has received a plurality of the legal votes cast at any election, for any office, the canvassers shall give to such person a certificate of election, notwithstanding the provisions of law may not have been fully complied with, in noticing or conducting the election, or canvassing or returning the votes, so that the real will of the plurality may not be defeated by any informality.

livered to person receiving plurality of vote.

CHAPTER 7.

OF THE ELECTION OF REPRESENTATIVES IN CONGRESS, ELECTORS OF PRESIDENT AND VICE PRESIDENT, AND SENATORS IN CONGRESS.

SECTION 1. Election of representatives in congress.
3. Election of electors of president and vice president and their duties.
7. Election of senators in congress.

Election of Representatives in Congress.

SECTION 1. A representative in the congress of the United States shall be chosen in each of the congressional districts into which the state is or shall be divided, at the general election in the year one thousand eight hundred and fifty, and every two years thereafter.

Representatives in Congress, when to be chosen.

SEC. 2. If a representative in congress shall resign, he shall forthwith transmit a notice of his resignation to the secretary of state; and if a vacancy shall occur, by death or otherwise, in the office of representative in congress, the clerk of the board of supervisors of the county in which such representative shall have resided at the time of his election, shall without delay transmit a notice of such vacancy to the secretary of state.

If they resign, or there is a vacancy, notice to be given to secretary of state.

Election of Electors of President and Vice President, and their duties.

SEC. 3. At the general election next preceding the time fixed for the choice of president and vice president of the United States, there shall be elected, by general ticket, as many electors of president and vice president as this state may be entitled to elect of senators and representatives in congress.

Electors when to be chosen, and their number.

SEC. 4. The electors of president and vice president shall convene at the capitol of this state on the first Wednesday of December next after their election, at the hour of twelve o'clock at noon of that day; and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or other cause, the electors present shall immediately proceed to fill, by ballot, and by plurality of votes, such vacancy in the electoral college; and when all the electors shall appear, or the vacancies shall have been filled as above provided, they shall proceed to perform the duties required of such electors by the constitution and laws of the United States.

When and where electors shall meet; may fill vacancies.

Secretary of state to prepare lists of electors, &c.

SEC. 5. The secretary of state shall prepare three lists of the names of the electors, procure thereto the signature of the governor, affix the seal of the state to the same, and deliver such certificates, thus signed, to one of the electors, on or before the said first Wednesday in December.

Compensation of electors.

SEC. 6. Every elector of this state for the election of a president and vice president of the United States, who shall attend and give his vote for those officers, at the time and place appointed by law, shall be entitled to receive two dollars and fifty cents for each day's attendance at such election, and ten cents for every mile he shall travel in going to and returning from the place where the electors shall meet, on the most usual route, to be paid out of the state treasury.

Election of Senators in Congress.

Senators in congress, when to be chosen.

SEC. 7. On the third Monday of January next before the expiration of the time for which any senator was elected to represent this state in congress, if the legislature shall be then in session, and if not, then within ten days after a quorum of both houses shall be assembled at the then next meeting of the legislature, an election shall be held for a senator in congress at the place where the legislature shall be then sitting, to succeed such senator so going out of office, which election may be continued from day to day until a senator shall be elected: *Provided*, that if the election first named in this section shall not be held on the third Monday of January, it may be held on any subsequent day.

When in case of vacancy.

SEC. 8. Whenever the seat of any such senator shall become vacant before the expiration of the term for which he was elected, another senator shall be elected in his place, within ten days after the legislature shall have notice of such vacancy, at the place where it shall be then sitting.

How election made; members to vote viva voce, &c.

SEC. 9. Such election shall be made by the senate and assembly in joint convention held in the hall of the assembly; each member shall vote viva voce upon a call of the roll, and the votes for senator shall be entered upon the journal of the convention; and a majority of all the votes given shall be necessary to a choice.

Certified statement of result to be made and recorded.

SEC. 10. The president of the senate, and speaker of the house, shall cause a statement of the result of such election to be made under their hands, certifying who has been chosen such senator, which certified statement shall be delivered to the secretary of state and recorded by him.

Secretary to make out and deliver certificate of election.

SEC. 11. The secretary of state shall immediately thereafter, make out a certificate under the seal of this state, and attested by him as secretary, certifying such choice, and deliver the same to the person so chosen senator.

TITLE III.

OF THE LEGISLATURE; OF STATE OFFICERS; OF COUNTIES AND COUNTY OFFICERS; AND OF RESIGNATIONS, VACANCIES, REMOVALS, AND SUPPLYING VACANCIES.

CHAPTER 8. Of the legislature.
9. Of state officers.
10. Of counties and county officers.
11. Of resignations, vacancies and removals, and of supplying vacancies.

CHAPTER 8.

OF THE LEGISLATURE.

SECTION 1. The regular annual session of the legislature shall commence on the second Wednesday in January in each year.

Annual session, when to commence.

SEC. 2. No officer of the senate or assembly, while in actual attendance upon the duties of his office, shall be liable to arrest on civil process.

Officers of senate and assembly, not liable to arrest on civil process.

SEC. 3. Each house may punish as a contempt, by imprisonment, a breach of its privileges, or the privileges of its members; but only for one or more of the following offences, to wit:

Each house may punish as a breach of its privileges for certain offences.

1. The offence of arresting a member or officer of the house, or procuring such member or officer to be arrested, in violation of his privileges from arrest;

2. That of disorderly conduct in the immediate view of the house, and directly tending to interrupt its proceedings;

3. That of refusing to attend or to be examined as a witness, either before the house, or a committee, or before any person authorized by the house, or by a committee, to take testimony in legislative proceedings;

4. That of giving or offering a bribe to a member, or of attempting by menace, or other corrupt means or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent his giving the same; but the term of imprisonment which such house may impose for any contempt specified in this section, shall not extend beyond the same session of the legislature.

SEC. 4. Every person who shall be guilty of any contempt specified in the preceding section, shall also be deemed guilty of a misdemeanor; and on conviction thereof, shall be punished by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment, in the discretion of the court.

Persons guilty of a contempt, to be deemed guilty of a misdemeanor, and how punished.

SEC. 5. The speaker of the assembly, and the president of the senate, the governor, secretary of state, attorney general, or any judge of the supreme court, are hereby authorized to administer the oath of office to the members and officers of the legislature.

Who authorised to administer oath of office to members.

Members of either house acting on a committee, may administer oaths.

Sec. 6. Any senator or member of the assembly, while acting as a member of a committee of the legislature, or of either branch thereof, shall have authority to administer oaths to such persons as shall be examined before the committee of which he is a member.

CHAPTER 9.

OF STATE OFFICERS.

Section 1. Of the Governor.
9. Of the Secretary of State.
19. Of the powers and duties of the Secretary as auditor.
26. Of the State Treasurer.
36. Of the Attorney General.
44. Of the State Superintendent.
57. Of Notaries Public.

Of the Governor.

Governor to deposite acts &c., in office of secretary of state, &c.

Section 1. The governor shall cause all acts and joint resolutions of the legislature, which have become laws, or taken effect by his approval or otherwise, to be deposited in the office of the secretary of state without delay, and shall inform the house thereof, in which such act or joint resolution originated.

To notify attorney general of commencement of suits, and may employ counsel.

Sec. 2. Whenever he shall receive notice of the commencement of any suit or proceeding between other parties, by which the rights, interests, or property of the state shall be liable to be injuriously affected, he shall inform the attorney general thereof, and require him to make every legal and equitable defence against such suit or proceeding; and in any such case, or in any suit prosecuted or defended in behalf of this state, he may, if the public interest require it, employ such counsel as he shall deem proper, to assist the attorney general in any such suit or proceding; and in case of the sickness or absence of the attorney general, or if he shall be any way interested adversely to the state, in any suit or proceeding, the governor may employ counsel to act in his stead.

May offer reward.

Sec. 3. Whenever any criminal, charged with a capital offence or with any felony, shall escape, or whenever any heinous crime has been committed in this state, the governor may offer a reward for the apprehension and delivery, or conviction of such criminal, or the perpetrator of such crime: *Provided* that in no case shall the reward thus offered, exceed the sum of five hundred dollars.

Expenses incurred how paid.

Sec. 4. All expenses incurred under the two last preceding sections shall be paid out of the state treasury.

Salary of governor to cease when he ceases to act, and to be received by lieutenant governor.

Sec. 5. Whenever, by the impeachment of the governor, his removal from office, death, resignation, or absence from the state, the powers and duties of his office shall devolve upon the lieutenant governor, the salary of the governor shall cease, and the same shall be received by the lieutenant governor, as a full compensation for his services, until such disability shall cease, or the vacancy be filled.

Governor to draw the five per centum of the nett proceeds of sales of public lands.

Sec. 6. The governor of this state is hereby authorized and empowered to receive from the treasury department of the United States, from time to time, as he shall see fit to draw for the same, the five per centum of the nett proceeds of sales of the public lands, to which this state is, or shall be entitled, pursuant to the act of congress approved August sixth, eighteen hundred and forty-six, and to execute the proper vouchers therefor; and when received he shall pay the same into the state treasury, to the credit of the school fund.

To distribute the public arms, and to require bond of officers.

Sec. 7. The governor of this state is hereby authorized to distribute the quota of arms and military equipments which the state of Wisconsin may receive from the government of the United States, under the provisions of the several acts of congress, providing for arming and equipping the whole body of the militia of the United States. He shall require the officers, to whom such arms or equipments are distributed and delivered, to execute to the state of Wisconsin a bond, with two sufficient sureties, to be approved by him, in the penal sum, as near as may be, of double the value of said arms or equipments, conditioned for the safe-keeping and delivery of the same on the order of the governor.

Annual appropriation to defray contingent expenses of executive office.

Sec. 8. Six hundred dollars is hereby annually appropriated out of the treasury of this state, (or so much thereof as may be necessary,) to defray the contingent expenses of the executive office, including clerk hire and postage, to be drawn quarterly, upon the order of the governor, and for which he is hereby required to render to the legislature an annual statement of the expenditure from this fund.

Of the Secretary of State.

Secretary of state to take oath and give bond.

Sec. 9. The secretary of State shall, within twenty days after receiving notice of his election, and before entering upon the duties of his office, take and subscribe the oath required by the constitution, and give a bond with sufficient sureties to the state of Wisconsin, in the sum of twenty-five thousand dollars, conditioned for the faithful discharge of the duties of his office as secretary of state, and also as auditor, and a member of the board of commissioners, for the sale of the school and university lands, and for the investment of the funds arising therefrom, and for the faithful performance by all persons appointed or employed by him in his office, of their duties and trusts therein; and that he will deliver over to his successor in office, or to any other person authorised by law to receive the same, all moneys, books, records, deeds, bonds, documents, maps, papers and other articles and effects belonging or appertaining to his said office; which bond shall be approved by the governor, and together with the oath of office, be preserved in the executive office.

To keep a record of official acts of governor, &c.

Sec. 10. It shall be the duty of the secretary of state,

1. To keep a fair record of the official acts of the executive department of the state, and he shall, when required lay the same, and all matters relative thereto before either branch of the legislature.

To be keeper of great seal, and countersign and register commissions.

2. He shall be the keeper of the great seal of the state, and shall affix the same to and countersign all commissions and other official acts issued or done by the governor, his approbation of the

CHAPTER 9

laws excepted; and he shall also make a register of such commissions, specifying the person to whom given or granted, the office conferred, with the date and tenor of the commission, in a book to be provided and kept for that purpose.

To have custody of books, &c., and same to be open to inspection.

3. He shall have the custody of all books, records, deeds, bonds, parchment, maps, papers and other articles and effects belonging to the state, deposited or kept in his office, and shall, from time to time, make such provision for the arrangement and preservation thereof as shall be necessary; and the same, together with all accounts and transactions of his office, shall be open at all times to the inspection and examination of the governor, or any committee of either or both houses of the legislature.

To report as secretary.

4. He shall report annually to the legislature, in connection with his report as auditor, any matters pertaining to his office as secretary not embraced in such report as auditor; he shall also, when required, furnish the governor or either branch of the legislature in writing, with any information relative to the duties of his office.

To give copies of laws, &c., and same to be evidence.

5. He shall, when required by any person or persons so to do, make out a copy of any law, resolution, deed, bond, record, document or paper deposited or kept in his office, and shall attach thereto, his certificate under the great seal of the state, and such copy thus certified, shall in all cases be evidence equally and in like manner as the original, and he shall receive therefor, the sum of twelve cents per folio.

To keep enrolled laws, &c., and not to permit same to be taken out of office.

6. He shall be charged with the safe keeping of all enrolled laws and resolutions, and he shall not permit the same or any of them to be taken out of his office, or inspected, except in his presence, unless by order of the governor, or by resolution of one or both houses of the legislature, under penalty of one hundred dollars.

To deposit with treasurer laws authorising payment of money.

7. He shall deposite in the office of the treasurer exemplified copies of all laws authorising the payment of money out of the state treasury, immediately after the passage of the same.

Where to keep his office, &c.

8. He shall keep his office at the seat of government, and shall keep the same open during business hours, at all times, Sundays excepted.

Deeds, &c., belonging to state to be deposited in his office.

Sec. 11. All deeds, conveyances, leases, bonds, mortgages, and other securities for money, belonging to the people of this state, shall, unless otherwise specially directed, be deposited and preserved in the office of the secretary of state and open to public inspection.

May appoint deputy; his duties.

Sec. 12. The secretary of state shall have power to appoint, under his hand and seal, a deputy, who, after he has taken the oath of office, and filed the same with the executive, may, whenever the secretary of state shall by reason of sickness, absence, or other inability, be prevented from discharging the duties of his office, execute and perform all the duties belonging to the office of secretary of state, except as auditor and commissioner of school and university lands, until such disability shall be removed, and for the faithful performance of his official duties, the secretary making the appointment, and the sureties in his official bond shall be responsible.

Clerks of senate and assembly to deposite books, &c., with secretary.

SEC. 13. The chief clerks of the senate and assembly, at the close of each session of the legislature, shall deposite for safe keeping in the office of the secretary of state, all books, bills, documents and papers in the possession of the legislature, correctly labelled, folded and classified.

To cause laws and resolutions to be bound, &c.

SEC. 14. It shall be the duty of the secretary of state, to cause the original enrolled laws and joint resolutions passed at each session of the legislature, together with the index containing the titles of the same, to be bound in a volume, in a substantial manner, and in the order in which they are approved; and no other or further record of the official acts of the legislature, so far as relates to acts and joint resolutions, shall be required of said secretary; and he shall also cause the title thereof, with the session at which the same shall have been passed, to be written or printed on the back of such volume.

To deposite in his office printed copy of laws, and note errors.

SEC. 15. He shall deposit in his office one copy of the laws printed by the persons employed to print them, having first examined and compared the same with the original laws on file, and noted at the end of each act every error or omission that may be found in the printed copy; and shall cause the title thereof, with the session at which the same shall have been passed, to be written or printed on the back of such volume.

To deposite acts of congress, &c., in state library.

SEC. 16. He shall cause the acts of the congress of the United States, and of the several states which may be received at his office, to be deposited in the state library.

Description of great seal to be deposited and recorded in his office.

SEC. 17. The description, in writing, of the great seal of this state, shall be deposited and recorded in the secretary's office, and shall remain a public record.

Other duties.

SEC. 18. The secretary of state shall perform such other duties as are assigned him by the constitution, or may be imposed upon him by law.

Of the Powers and Duties of the Secretary as Auditor.

His duties as auditor.

SEC. 19. It shall be the duty of the secretary of state, as auditor:

1. To superintend the fiscal concerns of the state, and to manage the same in the manner required by law;
2. To keep fair, clear, distinct and separate accounts of all the revenues, funds and incomes of the state; and also of all expenditures, disbursements, and investments thereof, showing the particulars of every expenditure, disbursement and investment;
3. To exhibit to the legislature, at its annual meeting, a complete statement of the funds of the state, of its revenues, and of the public expenditures during the preceding year, with a detailed estimate of expenditures to be defrayed from the treasury for the ensuing year, specifying therein each object of expenditure, and distinguishing between such as are provided for by permanent or temporary appropriations, and such as are required to be provided for by law, and showing the means from which such expenditures are to be defrayed;
4. To carefully examine, quarter yearly, the books and accounts of the treasurer, and the monies on hand in the treasury, and im-

mediately thereupon, report the result of such examination in writing, to the governor, specifying therein the amount and kinds of funds, particularly;

5. To suggest plans for the improvement and management of the public revenues;

6. To keep and state all accounts between this state and the United States, and all other accounts in which the state is interested;

7. To examine and settle the accounts of all persons indebted to the state, and to certify the amount or balance to the treasurer;

8. To direct and superintend the collection of all monies due to the state;

9. To examine and determine the claims of all persons against the state, in cases where provision for the payment thereof shall have been made by law, and certify the same to the state treasurer, and when any claim or account is authorized by law to be paid out of a general or contingent appropriation, he shall indorse upon the same a certificate of the amount due thereon, and file the same in the office of the state treasurer; and when no such provision has been made by law, or an insufficient provision has been made, he shall examine the claim and report the facts in relation to the same to the legislature.

10. To require every person who shall have received any monies belonging to the state, and shall not have accounted therefor, to settle their accounts;

11. To enter, in a book to be kept for that purpose, the date and amount of every certificate indorsed by him upon any claim or account, pursuant to the ninth subdivision of this section, with a reference to the law authorizing the payment of the same, and the name of the claimant.

May require person presenting account to be sworn

SEC. 20. Whenever any account shall be presented to the secretary of state for settlement, he may require the person presenting the same, and any other person or persons, to be sworn before him touching such account; and when so sworn, to answer orally or in writing as to any facts relating to the justness of the account.

To require persons receiving moneys belonging to state to account for same.

SEC. 21. The secretary of state shall, from time to time, require all persons receiving monies or securities, or having the disposition or management of any property of the state, of which an account is kept in his office, to render statements thereof to him, and all such persons shall render such statements at such time and in such form as he shall require.

To countersign and enter receipts for moneys paid to treasurer.

SEC. 22. He shall countersign, and enter in a book to be kept by him for that purpose, all receipts for money paid to the treasurer; and no such receipt shall be evidence of payment unless so countersigned.

To keep account between state and treasurer.

SEC. 23. He shall keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all monies received by him; and credit him with all monies paid by him pursuant to law.

To publish laws pertaining to collection of public moneys, with forms.

SEC. 24. He may, from time to time, cause to be published, at the expense of the state, in one or more of the newspapers printed therein, such laws of this state, or extracts therefrom, relating to the collection or payment of monies that may be due or become due to this state, or the duties to be performed by the public officers thereof, with appropriate forms, as he may deem necessary.

His salary.

SEC. 25. The secretary of state shall receive a salary of one thousand two hundred dollars per annum, to be paid out of the treasury of the state, in four equal quarterly payments, which shall be in full for all services required of him by any law or the constitution of this state, except in cases specified in the fifth subdivision of section ten of this chapter, and no further compensation shall be allowed for the services of any clerk or other officer connected with his office.

Of the State Treasurer.

State treasurer, where to keep his office, and his general duties.

SEC. 26. The state treasurer shall keep his office at the seat of government, shall receive and have charge of all monies paid into the state treasury, and shall pay out the same as directed by law.

To take oath of office, and give bond.

SEC. 27. The treasurer shall, within twenty days after he receives notice of his election, and before entering upon the duties of his office, take and subscribe the oath required by the constitution, and give a bond to the state of Wisconsin in the sum of one hundred thousand dollars, with not less than six sureties, who shall be resident freeholders of this state; conditioned for the faithful discharge of the duties of his office, and for the faithful performance by all persons employed by him in his office of their duties and trusts therein; and that he will deliver over to his successor in office, or to any other person authorized by law to receive the same, all moneys, books, records, papers, and other articles and effects belonging to his said office; which bond shall be approved by the governor, and, together with the oath of office of such treasurer, shall be preserved in the executive office; and such bond shall be deemed to extend to the faithful execution of the duties of the office of treasurer, until his successor shall be eleeted and fully qualified.

SEC. 28. It shall be the duty of the treasurer:

His duties.

1. To keep, in books provided for that purpose, fair, full and separate accounts of all monies received by him; also, a cash book, in which shall be entered a detailed account of all monies by him received and disbursed, a transcript of which for the week previous shall at the end of each week be deposited with the secretary of state;

2. To pay, on demand, out of the state treasury, all sums authorized by law to be so paid, if there are appropriate funds in the treasury to pay the same; and when any such sum is required to be paid out of a particular fund, it shall be paid out of such fund only; and he shall pay no moneys out of the treasury except in pursuance of a law authorizing the payment thereof; but when any claim or account is authorized by law to be paid out of a general or contingent appropriation, the same shall be paid by the treasurer, upon the certificate of the secretary of state endorsed upon such claim or account, certifying the amount due thereon;

but such certificate shall not be a voucher for the treasurer, unless the receipt of the claimant accompanies the same.

3. To pay all claims authorized to be paid out of the treasury, in the order in which they are presented, giving a preference to no one;

4. To give receipts for all monies paid to him, which before their delivery shall be presented to the secretary of state, who shall countersign the same, and enter them in his books to the credit of the county officer, or person making the payment, and charge the treasurer with the same. No receipt, unless it is so countersigned, shall be evidence of the payment of any money into the treasury of this state.

5. To permit the books, papers and transactions of his office to be open at all times to the inspection of the governor, secretary of state, attorney general, the legislature, or any committee of either branch thereof, to examine the same;

6. To deliver over to his successor in office all monies, books, records, papers, furniture and other effects belonging to or preserved in his office;

7. To report to the governor quarter yearly and oftener if required, the total amount of funds in the treasury, specifying in what kinds of currency they consist, the amount of each kind, and the amount belonging to each separate fund, and also all defalcations and neglect of duty of any disbursing or collecting officer, or agent of the state, and any information pertaining to the duties of his office, he may think proper or the governor shall require.

8. To report to the legislature at the commencement of each annual session, a full and detailed statement of all monies received into and paid out of the treasury during the preceding fiscal year; showing under separate heads from what sources received, and for what particular object or service paid out; and also the precise state of the treasury, together with such information and suggestions of a fiscal nature as he shall deem useful and proper; which statement of monies, received and paid, shall be published with the laws of the session at which the same shall have been made.

9. He shall perform all other duties imposed on him by law.

Copies of deeds, &c. certified by treasurer, to be evidence.

Sec. 29. Copies of all deeds, bonds, documents or papers filed in the office of the treasurer, and transcripts from the books or records kept therein, certified by him, shall be evidence equally and in like manner as the originals.

When governor to require treasurer to give additional bond.

Sec. 30. Whenever the funds in the treasury shall exceed three-fourths the amount of the treasurer's bond, or whenever the governor shall deem such bond insufficient by reason of the insolvency, death, or removal from the state of any of the sureties, or from any other cause, he shall require the treasurer to give an additional bond, within such time, in such reasonable amount, and with such security as he shall direct and approve.

Fiscal year, when to commence and close.

Sec. 31. The fiscal year of this State shall commence on the first day of January in each year, and close on the thirty-first day of December next succeeding.

SEC. 32. All books and accounts of the secretary of state, and of the state treasurer shall be kept, and all the duties of those offices shall be performed with reference to the beginning and ending of the fiscal year.

Books and accounts to be kept with reference to fiscal year.

SEC. 33. All officers and persons required to render annual accounts to the secretary of state or treasurer, shall close those accounts on the thiriy-first day of December in each year, and shall render such accounts as soon thereafter as may be practicable.

When accounts of officers to be closed.

SEC. 34. One recovery had on the official bond given by the secretary of state or state treasurer, shall not render such bond void, but the same may be prosecuted upon a breach thereof, from time to time, until the whole penalty is collected.

One recovery not to cancel secretary's or treasurer's bond.

SEC 35. The treasurer shall receive for his services, the sum of eight hundred dollars per annum, in four equal quarterly payments, in full compensation for all services required of him by any law, or the constitution of this state.

His salary.

Of the Attorney General.

SEC. 36. The attorney general shall appear for the state, and prosecute and defend all suits and proceedings civil or criminal, in the supreme court, in which the state shall be interested or a party; and shall also when requested by the governor or either branch of the legislature, appear for the people of this state, and prosecute or defend in any other court, or before any officer, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested.

Duties of attorney general.

SEC. 37. It shall be the duty of the attorney general, at the request of the governor, the secretary of state, or the treasurer, to prosecute any official bond or any contract in which the state is interested, deposited with either of them, upon a breach thereof; and to prosecute or defend for the state all suits, civil or criminal, relating to any matter connected with either of their departments.

To prosecute or defend for state at request of governor, &c.

SEC. 38. The attorney general shall consult with and advise the district attorneys, when requested by them, in all matters pertaining to the duties of their office. He shall also, when required, give his opinion, in writing, without fee, upon all questions of law submitted to him by the legislature, or either branch thereof, or by the governor, secretary of state, treasurer, or state superintendent.

To advise district attorneys, and give his opinion to the legislature, governor, &c.

SEC. 39. Whenever requested by the secretary of state, the treasurer, or the state superintendent, he shall prepare proper drafts for contracts, forms, and other writings which may be wanted for the use of the state; and he shall report to the legislature, or either branch thereof, whenever requested, upon any business pertaining to the duties of his office.

To prepare forms, &c., for treasurer and superintendent, and report to legislature.

SEC. 40. All monies received by the attorney general belonging to the people of this state, shall immediately upon the receipt thereof be paid by him into the state treasury.

Moneys belonging to state received by him, to be paid into treasury.

SEC. 41. The attorney general shall keep, in proper books, to be provided for that purpose at the expense of the state, a register of all actions and demands prosecuted or defended by him in be-

To keep a register.

half of this state, and of all proceedings had in relation thereto; and shall deliver the same to his successor in office.

To take oath of fice and give bond.

Sec. 42. Before he enters upon the duties of his office he shall take and subscribe the oath required by the constitution, and shall execute to the state of Wisconsin a bond, with not less than three sureties, in the sum of ten thousand dollars, to be approved by the governor, conditioned for the faithful performance of his duties as attorney general, and also as a member of the board of commissioners for the sale of the school and university lands, and for the investment of the funds arising therefrom, which bond and oath shall be filed in the office of the executive; and such bond shall be renewed in a larger amount, and with additional sureties, whenever required by the legislature or the governor.

His salary.

Sec. 43. The attorney general shall receive a salary of eight hundred dollars per annum, to be paid in equal quarterly payments, which shall be in full for all his services, both as attorney general, and as a member of the board of commissioners of school and university lands.

Of the State Superintendent.

State superintendent, when to be elected, and his term of office.

Sec 44. There shall be elected at the next general election, and biennially thereafter, a state superintendent, whose term of office shall commence on the first day of January next succeeding his election, and continue for the term of two years, and until his successor is elected and qualified.

To take and file oath of office.

Sec. 45. The state superintendent shall, before he enters upon the duties of his office, take and subscribe an oath to support the constitution of the United States, and of the state of Wisconsin, and faithfully to discharge the duties of his office to the best of his ability, which oath shall be filed in the office of the secretary of state.

His salary.

Sec. 46. The said superintendent shall receive for his services the sum of one thousand dollars per annum, payable quarterly in advance, with his actual postage, and the necessary stationery for his office, payable quarter yearly out of the state treasury.

His duties.

Sec. 47. He shall have a general supervision over the common schools in this state, and it shall be his duty, as far as practicable, to visit every county in the state, for the purpose of inspecting the schools, awakening an interest favorable to the cause of education, and diffusing as widely as possible, by public addresses and personal communication with school officers, teachers and parents, a knowledge of existing defects, and of desirable improvements in the government and the instruction of the schools.

Ib.

Sec. 48. It shall be his duty to recommend the introduction of the most approved text books, and as far as practicable to secure a uniformity in the use of text books in the common schools throughout the state; to discourage the use of sectarian books and sectarian instruction in the schools; to advise in the selection of books for school district libraries; and to open such correspondence abroad as may enable him to obtain so far as practicable, information relative to the system of common schools, and its improvements in other states and countries, which he shall embody in his annual report to the legislature.

Ib.

Sec. 49. He shall prescribe rules and regulations for the management of school district libraries, and the penalties which shall be imposed by district boards for any violation of such rules and regulations; he shall prepare for the use of common school officers suitable forms for making reports, and conducting all necessary proceedings, and he shall cause the laws relating to common schools, with the rules, regulations and forms aforesaid, and such instructions as he shall deem necessary, to be printed together, with a suitable index, in pamphlet form, by the person authorized to do the state printing, at the expense of the state; and he shall cause the same to be distributed among the several school districts, and other officers having the care of common schools throughout the state.

To examine and determine appeals.

Sec. 50. He shall examine and determine all appeals duly made to him from the decision of any school district meeting, or from the decision of any town superintendent in forming or altering, or in refusing to form or alter any school district, or concerning any other matter under the common school law of this state, and his decision thereon shall be final.

His annual report, and what to contain

Sec. 51. He shall prepare in each year, a report to be submitted to the legislature, bearing date on the last day of December in such year, containing

1. An abstract of all the common school reports received by him from the several clerks of the county boards of supervisors;
2. A statement of the condition of the common schools in this state;
3. Estimates and accounts of expenditures of the school monies;
4. Plans for the improvement and management of the common school fund, and for the better organization of the common schools; and
5. All such matters relating to his office, and the common schools of the state, as he shall deem expedient to communicate.

To apportion school moneys annually.

Sec. 52. It shall be the duty of the state superintendent, on or before the tenth day of February in each year, to apportion the amount of school monies to be distributed in such year, among the several counties of the state, and the share of each county among its respective towns and cities; such apportionment shall be made among the several towns and cities, according to the number of children in each, over the age of four, and under the age of twenty years according to the returns thereof as made to his office for the preceding year.

To certify apportionment to treasurer, and give notice of same to clerks of supervisors.

Sec. 53. He shall certify such apportionment to the treasurer of the state, and shall give immediate notice thereof to the clerk of each county board of supervisors, stating the amount apportioned to his county, and to each town and city therein, and the time when the same will be payable to the treasurer of such county.

Where to keep his office.

Sec. 54. The state superintendent shall have an office at Madison, where shall be deposited all papers and documents appertaining to the business of his office; and to which place communications on the subject of common schools may be addressed to him.

Copies of papers, &c., certified by him, to be evidence.

SEC 55. Copies of all papers deposited or filed in the office of the state superintendent of common schools, and all acts and decisions of such superintendent may be certified by him; and when so certified, shall be evidence equally and in like manner as the originals.

Duty of all officers, of whom annual reports are required, to make same before office expires

SEC. 56. It shall be the duty of the several officers, and boards of officers of this state, from whom annual reports are required by law to be made to the legislature, to cause their respective reports for the last year of their term of office, to be made out and deposited in their respective offices, on or before the last day when their term of office will expire, ready to be submitted to the next legislature, and the same shall be laid before such legislature immediately upon the permanent organization of the two houses.

Of Notaries Public.

Notaries public to be appointed by governor, and their term of office.

SEC. 57. The governor shall appoint, in each organized county of the state, one or more notaries public, who shall be considered state officers, and shall hold their offices for the term of two years, and shall have power to act, by virtue of their office, throughout the state.

To take oath of office, give bond, and provide seal, &c.

SEC. 58. Every notary public, before he enters upon the duties of his office, shall take and subscribe the oath prescribed by the constitution of this state, and shall give a bond to the governor, with sufficient surety in the penal sum of five hundred dollars, conditioned for the faithful discharge of the duties of his office. He shall also provide an official seal, and deposit an impression of the same, together with said oath and bond, in the office of the secretary of state.

Their powers and duties

SEC. 59. Notaries public shall have power to demand acceptance of foreign and inland bills of exchange, and payment thereof, and payment of promissory notes, and may protest the same for non-acceptance or non-payment, as the case may require; and may administer oaths, and take acknowledgments of deeds and other written instruments, and exercise and perform such other powers and duties as by the law of nations, and according to commercial usage, may be exercised and performed by notaries public.

Their certificate to be evidence.

SEC. 60. In all actions at law, the certificate of a notary, under his hand and seal of office, of the presentment by him of any promissory note or bill of exchange for payment or acceptance, and of any protest to such note or bill for non-payment or non-acceptance, and of the service of notice thereof, and specifying the mode of giving such notice, and the reputed residence of the party to whom the same was given, and the post office nearest thereto, shall be presumptive evidence of the facts contained in such certificate.

To give notice when bill or note protested.

SEC. 61. It shall be the duty of each and every notary public, when any bill of exchange or promissory note shall be by him protested for non-acceptance or non-payment, to give notice in writing thereof to the maker and each and every endorser of a bill of exchange, and to each and every surety or endorser of any promissory note, immediately after such protest shall have been made, and also personally to serve the notice upon the person or persons protested against, provided he or they reside within two miles of the residence of such notary public; but if such person or persons reside more than two miles from such residence, the said notice may be forwarded by mail, or other safe conveyance.

To keep a record of protests, &c; memorandum to be evidence.

SEC. 62. Every notary public shall keep a record of all protests by him made, and all notices by him served, and of the time and manner in which the same shall have been served, and the names of all the persons to whom the same were directed, and the description and amount of the instrument protested; and any note or memorandum made by him in his own hand writing, and signed by him upon any protest, or in any record of official acts kept by him, shall be presumptive evidence of the fact of any notice of non-acceptance or non-payment, having been sent or delivered at the time and in the manner stated in such note, memorandum or record.

Their papers and records to be deposited in office of clerk of the circuit court.

Penalty for neglect, and for destroying same.

SEC. 63. When any notary public shall resign, or be removed from office, or shall cease to act as such notary public by reason of the expiration of his term of office, he shall deposit his papers and records in the office of the clerk of the circuit court in the county where he resided at the time of his appointment; and any notary public who shall neglect, for the space of three month after such resignation or removal from office, or ceasing to act, to deposit his said records and papers in the office of the clerk of the circuit court as aforesaid, shall forfeit and pay a sum not less than fifty dollars nor more than five hundred dollars; and if any executor or administrator of any deceased notary public shall neglect to deposit such records or papers as aforesaid, which shall come into his hands, in the said clerk's office, for the space of three months after the acceptance of his trust, he shall forfeit and pay a sum not less than fifty dollars nor more than five hundred dollars; and if any person shall knowingly destroy, deface, or conceal any records or papers of any notary public, he shall forfeit and pay a sum not less than fifty dollars nor more than five hundred dollars, and shall be moreover liable to an action for damages by the party injured.

Duty of clerks of circuit courts.

SEC. 64. It shall be the duty of the several clerks of the circuit courts to receive and keep safe all the records and papers directed by this chapter to be deposited in their office, and give attested copies of any of said records or papers when required; and copies so given by said clerks are hereby declared to be as valid as if the same had been given by the said notary public.

Liable for damages to party injured, and to criminal prosecution.

SEC. 65. For any misconduct in any of the cases where notaries public, appointed under the authority of this state, are authorized to act, either by the laws of this state, or by the laws of nations, or by commercial usage, they shall be liable to the parties injured thereby for all damages sustained, and shall also be subject to criminal prosecution and punishment as provided by law for misconduct in the performance or neglect to perform any official duty or act authorized or enjoined by the laws of this state.

Removal from county to vacate office.

SEC. 66. Whenever any notary public shall remove out of the connty in which he resided at the time of his appointment, he shall be deemed to have resigned his office, and his power to act as such notary public shall cease immediately upon such removal.

Faith and credit to be given to official acts of notaries.

Sec. 67. Full faith and credit shall be given to all the protestations, attestations, certificates, and other instruments of publication of all notaries public now in office, or who shall hereafter be appointed under the provisions of this chapter.

CHAPTER 10.

OF COUNTIES AND COUNTY OFFICERS.

Section 1. Of counties.
8. Common jurisdiction of certain counties.
16. Of county buildings.
18. Of legal proceedings in favor of and against counties.
25. Of the board of supervisors.
44. Of the clerk of the board of supervisors.
54. Of the clerk of the circuit court.
62. Of district attornies.
73. Of judges of probate.
75. Of court of commissioners.
76. Of sheriffs.
99. Of coroners.
103. Of the county treasurer.
118. Of registers of deeds.
127. Of county surveyors.
137. Miscellaneous provisions concerning county officers.

Of Counties.

Rights, &c., of counties

Section 1. All the rights, powers, duties, privileges, and immunities of the several counties, shall remain, as now established, until the same shall be altered by law.

Each county to be a body politic, and their powers as such.

Sec. 2. Each organized county within this state, shall be a body politic and corporate, and as such, shall be empowered to act for the following purposes to wit:

1. To sue and be sued.
2. To purchase and hold real and personal estate, for the use of the county, and lands sold for taxes as provided by law.
3. To sell and convey any real or personal estate, owned by the county, and make such orders respecting the same as may be deemed conducive to the interests of the inhabitants.
4. To make all contracts, and to do all other acts, in relation to the property and concerns of the county, necessary to the exercise of its corporate or administrative powers.
5. To exercise such further powers, as shall be specially conferred by law.

Counties organised for county and not judicial purposes.

Sec. 3. Counties organized for county, and not judicial purposes, shall be governed by the provisions of this chapter, so far as they shall be applicable, subject, however, to the provisions of their organic acts; and such counties shall, for judicial purposes, be deemed to be within the limits and part of the county to which they are attached.

Portions of state not organised into counties

Sec. 4. Such portions of the state, not organized into counties, as are annexed to any organized county shall for judicial and other purposes, be deemed to be within the limits and part of the county to which they are annexed.

Real and personal estate, when deemed property of county.

SEC. 5. All real and personal estate, heretofore conveyed, or which shall hereafter be conveyed by any form of conveyance, to any county or the inhabitants thereof, or to any person or persons for the use and benefit of such county, or its inhabitants, shall be deemed to be the property of such county; and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such county by their respective corporate names.

Supervisors may appoint agents to sell and convey real estate of county.

SEC. 6. The board of supervisors of each county, may, by their order of record, appoint one or more agents to sell and convey any real estate of their county, not donated for any special purpose; and all deeds made on behalf of such county, by such agents under their hands and seals, and duly acknowledged by them, shall be sufficient to convey all the right, title, interest and estate, which the county may then have in and to the land so conveyed.

Powers of county to be exercised by board of supervisors.

SEC. 7. The powers of a county, as a body politic and corporate, can only be exercised by the board of supervisors thereof, or in pursuance of a resolution by them adopted.

Common jurisdiction of certain counties.

Common jurisdiction of counties on Lake Michigan, in criminal cases.

SEC 8. The counties of Racine, Milwaukee, Washington Sheboygan, Manitowoc and Brown, and such other counties as shall hereafter be organized upon the westerly shore of Lake Michigan, shall have jurisdiction in common of all offences committed on that part of said lake which lies within the limits of this state; and such offences may be heard and tried in either of said counties in which legal process against the offender shall be first issued, in like manner, and to the same effect, as if the offence had been committed within the county in which such process shall be issued.

Same in civil cases.

SEC. 9. All civil process from either of the counties named in the preceding section, and from any other counties which shall hereafter be organized upon the westerly shore of Lake Michigan, may be executed within, and upon that part of said lake which lies within the limits of this state.

Same of counties on Lake Superior.

SEC. 10. The county of La Pointe, and such other counties as shall hereafter be organized upon the southerly shore of Lake Superior, shall have jurisdiction in common, of all offences committed on that part of Lake Superior, which lies within the limits of this state; and such offences may be heard and tried in either of said counties in which legal process against the offender shall be first issued, in like manner, and to the same effect, as if such offence had been committed within the county in which such process shall be issued.

Same in civil cases.

SEC. 11. All civil process from the county of La Pointe, and from any other counties which shall hereafter be organized upon the southerly shore of Lake Superior, may be executed within, and upon that part of said lake which lies within the limits of this state.

Same of counties on Winnebago lake.

SEC. 12. The counties of Fond du Lac, Calumet and Winnebago, shall have jurisdiction in common, of all offences committed on any part of Winnebago lake; and such offences may be heard and tried in either of said counties in which legal process against the offender shall be first issued, in like manner, and to the same effect, as if such offence had been committed within the county in which such process shall be issued.

Same in civil cases.

SEC. 13. All civil process, from either of the counties named in the preceding section, may be executed within, and upon any part of Winnebago lake.

Same of counties on Mississippi river.

SEC. 14. The counties of Grant, Crawford, Chippewa, and St. Croix, and such other counties as shall hereafter be organized within this state, upon the Mississippi river, shall have jurisdiction, in common, of all offences committed on said river within the jurisdiction of this state; and such offences may be heard and tried in either of said counties in which legal process against the offender shall be first issued, in like manner and to the same effect, as if the offence had been committed within the county in which such process shall be issued.

Same in civil cases.

SEC. 15. All civil process from either of the counties named in the preceding section, and from such other counties as shall hereafter be organized upon the Mississippi river, may be executed upon that part of said river which lies within the jurisdiction of this state.

Of County Buildings.

Each county to provide county buildings.

SEC. 16. Each county organized for judicial purposes shall, at its own expense, provide a suitable court house, and a suitable and sufficient jail, and fire-proof offices, and other necessary county buildings, and keep the same in good repair.

If prisoner escape from insufficiency of jail, county liable.

SEC. 17. In case of the escape of any prisoner, by reason of the insufficiency of the jail, whereby the sheriff or any other person shall be made liable to any party at whose suit such prisoner was committed, or to whose use any forfeiture was adjudged against him, the county shall reimburse and pay all sums of money recovered of the sheriff, or such other person, by such party, by reason of such escape.

Of Legal Proceedings in favor of and against Counties.

Legal proceedings in which county concerned, to be conducted same as between individuals.

SEC. 18. Whenever any controversy or cause of action shall exist, between any of the counties of this state, or between any county and the state, or an individual or individuals, such proceedings shall be had for the purpose of trying and finally settling such controversy, and the same shall be conducted in like manner, and the judgment or decree therein shall have the like effect, as in suits or proceedings between individuals and corporations.

Name in which county shall sue and be sued.

SEC. 19. In all such suits or proceedings, by or against a county, the name in which the county shall sue or be sued, shall be "the board of supervisors of the county of ;" (the name of the county,) but this provision shall not prevent other county officers, when authorized by law, from suing in their name of office, for the benefit of the county.

On whom process against supervisors to be served, and duty of clerk of board.

SEC. 20. In all legal proceedings against the board of supervisors, the process shall be served on the clerk of the board; and whenever such suit or proceeding shall be commenced, it shall be the duty of the clerk forthwith to notify the district attorney thereof, and to lay before the board of supervisors, at their next annual meeting, all the information he may have in regard to such suit or proceeding.

Inhabitants of county to be competent witnesses and jurors.

Sec. 21. On the trial of every suit in which a county may be interested, the inhabitants of such county shall be competent witnesses and jurors, if otherwise competent or qualified according to law.

Suits for or against counties, may be prosecuted before justices.

Sec. 22. Any action in favor of or against a county, which, if prosecuted by or against an individual, could be prosecuted before a justice of the peace, may be prosecuted by or against such county, in like manner, before such justice.

Costs recoverable in all cases.

Sec. 23. In all suits or proceedings prosecuted by or against counties, or by or against county officers in their name of office, costs shall be recoverable as in suits between individuals.

Execution against supervisors or county officers, not to issue, except on order of court.

Sec. 24. When a judgment shall be recovered against the board of supervisors of any county, or against any county officer, in an action prosecuted by or against him in his name of office, where the same should be paid by the county, no execution shall be awarded or issue upon such judgment, except as herein provided, but the same, unless reversed, shall be levied and collected as other county charges, and when so collected, shall be paid by the county treasurer to the person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor; but if payment thereof be not made within sixty days after the town treasurers are required to make their returns of county taxes next after the rendition of such judgment, execution may be issued thereon upon the order of the court authorized to issue such execution on special application therefor.

Of the Board of Supervisors.

Of whom county board of supervisors to consist.

Quorum.

Where but one town in county, town supervisors to be county supervisors.

Sec. 25. The county board of supervisors shall consist of the chairmen of the boards of supervisors of the several towns, and the supervisors in any city in the county, authorized to sit in the county board; and a majority of the supervisors entitled to a seat in the county board, shall constitute a quorum for the transaction of business; but whenever a county shall consist of only one town, the supervisors of such town shall constitute the board of county supervisors for such county, and they shall exercise and perform all the powers and duties of a board of county supervisors.

Annual meeting of board; when and where to be held.

Special meetings and adjournments.

Sec. 26. The county board of supervisors shall meet annually on the Tuesday next succeeding the general election in each year, at the county seat, if there be one, in their respective counties, for the transaction of business as a board of supervisors. They may also hold special meetings when necessary, at such times and places as they may find convenient, and shall have power to adjourn from time to time, as they may deem necessary.

General powers of county board of supervisors.

Sec. 27. The board of supervisors of each county in this state, shall have power at any legal meeting:

1. To make such orders concerning the corporate property of the county as they may deem expedient.

2. To examine and settle all accounts of the receipts and expenses of the county; and to examine, settle, and allow all accounts chargeable against such county; and when so settled they

may issue county orders therefor, as provided by law. But the board of suqervisors of any county shall not issue in any one year a greater amount of county orders than the amount of the county tax levied in such county for such year; and no interest shall ever be paid by any county on any county order.

3. To build and keep in repair county buildings.

4. To cause the county buildings to be insured in the name of the treasurer of the county, and his successors in office, or otherwise, for the benefit of the county, as they shall deem expedient, and in case there are no public buildings, to provide suitable rooms for county purposes.

5. To apportion and order the levying of taxes, as provided by law, and direct the raising of such sums of money as may be necessary to defray the county charges and expenses, and all necessary charges incident to, or arising from the execution of their lawful authority.

6. To represent the county, and to have the care of the county property, and the management of the business and concerns of the county, in all cases where no other provision shall be made.

7. To perform all other acts and duties, which may be authorized and required by law.

Special powers.

SEC. 28. In addition to the ordinary powers and duties of the several county boards of supervisors enumerated in the preceding section, the following special powers are conferred upon them, subject to such modifications and restrictions as the legislature shall from time to time prescribe, to wit:

1. To set off, organize and change the boundaries of towns in their respective counties; designate and give names thereto, and the time and place of holding the first elections therein.

2. To appoint commissioners, to act with similar commissioners duly appointed in any other county or counties, and authorize them to lay out, alter, or discontinue any road extending through their own and one or more other counties, subject to the ratification of the board.

3. To alter, vacate, or discontinue territorial or state roads, within their respective counties.

4. To authorize the levying and collecting of taxes for specific purposes, in any town or school district, not exceeding one thousand dollars, when such town or school district is not authorized by law to levy and collect the same, or so large an amount; and to authorize the issuing and renewal of any warrant for the collection of town, school, or road district taxes, as they shall deem just and expedient, when the same is not otherwise authorized by law, provided a majority of the electors of such town or school district shall at some duly organized meeting vote that such a tax be raised.

5. To grant licenses for keeping ferries in their respective counties, and such other licenses as shall be prescribed by law.

6. To allow such bounties for the destruction of wolves, in their respective counties, as they may deem proper.

To have a seal, sit with open doors, and meetings to be public.

SEC. 29. Every county board of supervisors shall have a seal, and may alter the same at pleasure; they shall sit with open doors, and all persons conducting in an orderly manner, may attend their meetings; and all questions before them, unless otherwise provided, shall be determined by the votes of the majority of the supervisors present.

To elect a chairman.

Sec. 30. They shall at their first meeting after their election, choose one of their number as chairman, who shall preside at such meeting, and at all other meetings during the year, if present; but in case of his absence from any meeting, the members present shall choose one of their number as temporary chairman.

Chairman to administer oaths and countersign orders.

Sec. 31. Every chairman shall have power to administer an oath to any person concerning any matter submitted to the board, or connected with their powers or duties; and he shall countersign all county orders.

Accounts presented, to be specific, and verified by affidavit.

Sec. 32. No account shall be allowed by the county board of supervisors, unless the same shall be made out in separate items, and the nature of each item specifically stated; and where no specific fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such account, shall be specified; which account, so made out, shall be verified by affidavit, to be filed therewith.

Board may disallow account verified, or require further proof.

Sec. 33. Nothing in the preceding section shall be construed to prevent any such board from disallowing any account, in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof as they may think proper.

When new town organised, plat and record thereof to be made, &c.

Sec. 34. Whenever any board of supervisors shall organize a new town, or alter the boundaries of any town in their county, they shall cause a plat and record to be made thereof by their clerk, specifying the name and boundaries of such town, which plat and record shall be kept in the office of such clerk; and said board shall designate some place in the town so organized by them, where the first town meeting shall be held.

When claim disallowed by board, appeal allowed to circuit court.

Sec. 35. When any claim of any person against a county shall be disallowed, in whole or in part, by the board of supervisors, such person may appeal from the decision of such board to the circuit court for the same county, by causing a written notice of such appeal to be served on the clerk of such board, within thirty days after the making of such decision, and executing a bond to such county with sufficient security, to be approved by the clerk of said board, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant by the court.

Clerk of board to give notice of same, and make return, and how appeal tried.

Sec. 36. The clerk of the board, upon such appeal being taken, shall immediately give notice thereof to the district attorney, and shall make out a brief return of the proceedings in the case before the board, with their decision thereon, and shall file the same, together with the bond and all papers in the case, in his possession, with the clerk of such circuit court; and such appeal shall be entered, tried and determined, the same as appeals from justices' courts, and costs shall be awarded thereupon in like manner.

Books, &c., of board to be deposited with their clerk, and open to inspection without charge.

Sec. 37. The books, records and accounts of the boards of supervisors, shall be deposited with their clerk, and shall be open, without any charge, to the examination of all persons.

Board to furnish blank assessment rolls, and books, &c., for county officers.

Sec. 38. The board of supervisors in every county, shall, at the expense of the county, furnish annually, and in due season, the assessor in each town in their county, with a suitable blank assessment roll for his town, prepared according to the provisions of law; and shall also provide suitable books and stationery for the use of the clerk of their board, the register of deeds, the judge of probate, county treasurer, and the clerk of the circuit court, together with appropriate cases, and other furniture for the safe and convenient keeping of all the books, documents, and papers belonging to each of said offices; and also official seals for each of said officers where the same are required by law.

To examine annually the county orders, and to make list of and destroy same.

Sec. 39. The board of supervisors at their annual session, in each year, or oftener, if they deem it necessary, shall carefully examine the county orders returned by the county treasurer, by comparing each order with the record of orders in the clerk's office. They shall cause to be entered on the said record opposite the entry of each order issued, the date when the same was cancelled. They shall also make a complete list of the orders so cancelled, specifying the number, date, amount, and the person to whom the same is made payable, which statement shall be entered at length on the journal of the board, and immediately after the above requirements are complied with, the orders so cancelled shall be destroyed in the presence of the board.

To publish annually a report of receipts and expenditures.

Sec. 40. The several boards of supervisors, shall cause to be made out and published yearly, immediately after their annual meeting, in at least one newspaper published in their county, if such there be, a report of the receipts and expenditures of the year next preceding, and the accounts allowed; and if no newspaper be published in the county, then a copy of such report shall be posted on the court house door, and at two other public places in the county.

How special meeting called.

Sec. 41. A special meeting of the county board of supervisors of any county, shall be holden only when requested by a majority of the members thereof; which request shall be in writing, addressed to the clerk of the board, and specify the time and place of such meeting; and upon the reception of such request, the clerk shall immediately transmit notice in writing of such meeting, to each of the members of the board.

Compensation of members of board.

Sec. 42. Each member of the board of supervisors shall be allowed, and paid by the county, a compensation for his services and expenses in attending the meetings of the board, at the rate of two dollars per day, for the time he shall actually attend, and six cents for each mile travelled in going to and returning from the place of meeting, for any distance travelled beyond six miles from such place; but no per diem allowance shall be made for any time occupied in travelling, where mileage is allowed therefor; and no supervisor shall be allowed to draw pay for more than fifteen days attendance on the county board, in any one year.

Penalty for refusal, or neglect to perform duties.

Sec. 43. If any supervisor shall refuse, or neglect to perform any of the duties which are, or shall be required of him by law, as a member of the county board of supervisors, without just cause therefor, he shall, for each offence, forfeit a sum of not less than fifty, nor more than two hundred dollars.

Of the Clerk of the Board of Supervisors.

Clerk of board to be elected for two years, and to execute bond.

SEC. 44. A clerk of the board of supervisors shall be elected in each county in this state, for the term of two years, and he shall, before he enters upon the duties of his office, execute to and file with the treasurer of the county, a bond, with two or more sureties, in the penal sum of two thousand dollars, to be approved by such treasurer, with a condition in substance, as follows, to wit:

Condition of bond.

"Whereas the above bounden was elected to the office of clerk of the board of supervisors of the county of on the day of ; Now therefore, the condition of the above obligation is such, that if the said shall faithfully perform all the duties of his said office, and shall pay over all monies that may come into his hands as such clerk, as required by law, and shall deliver to his successor in office all the books, records, papers, and other things belonging to his said office, then the above obligation shall be void, otherwise to be and remain in full force."

To appoint a deputy, and his powers and duties, &c.

SEC. 45. Every such clerk shall appoint a deputy, in writing under his hand, and shall file such appointment in his office; and such deputy, in case of the absence or disability of such clerk, or in case of a vacancy in his office, shall perform all the duties of such clerk, during such absence, or until such vacancy shall be filled; and every such clerk, and his sureties, shall be responsible under his official bond for the acts of his deputy.

If vacancy, board may appoint a clerk.

SEC. 46. In case of vacancy in the office of such clerk, or in case he shall be incapable of discharging the duties of his office, the county board of supervisors may, if they see fit, appoint a person clerk of their board; and the person so appointed, upon giving a bond with like sureties, penalty and condition as that above required of such clerk, shall perform all the duties of such clerk, until such vacancy be filled or such disability be removed; and thereupon the powers and duties of the deputy of the last clerk shall cease.

General duties of clerk of board.

SEC. 47. It shall be the general duty of such clerk,

1. To record, in a book to be provided for that purpose, all the proceedings of the board.

2. To make regular entries of all their resolutions and decisions on all questions concerning the raising of monies.

3. To record the vote of each supervisor on any question submitted to the board, if required by any member present.

4. To sign all orders issued by the board for the payment of money, and to record, in a book provided for that purpose, the reports of the county treasurer of the receipts and disbursements of the county.

5. To preserve and file all accounts acted upon by the board, with their action thereon; and he shall perform such special duties as are required of him by any law.

Duty as to accounts and records.

SEC. 48. It shall be the duty of such clerk to designate upon every account, on which any sum shall be audited and allowed by the board, the amount so audited and allowed, and the charges for which the same was allowed; and he shall also deliver to any per-

CHAPTER 10.

son who may demand it, a certified copy of any record in his office, or of any account on file therein, on receiving from such person six cents for every folio contained in such copy.

How county orders issued and entered.

SEC. 49. Such clerk shall not sign, or issue any county order, except upon a recorded vote or resolution of the board of supervisors authorizing the same, and every such order shall be numbered, and the date, amount and number of the same, and the name of the person to whom it is issued, shall be entered in a book, to be kept by him in his office for that purpose.

To file notice of apportionment of school moneys, and transmit copy to county treasurer, &c

SEC. 50. Whenever the clerk of the board of supervisors of any county, shall receive from the state superintendent notice of the apportionment of school monies to be distributed in the county, he shall file the same in his office, and transmit a certified copy thereof to the county treasurer; and such clerk shall also lay a certified copy thereof before the board of county supervisors, at their next annual meeting.

To transmit to state superintendent resolutions of board relative to raising school moneys.

SEC. 51. It shall be the duty of the clerk of the board of supervisors, in each county, on the last Monday in December, in each year, to transmit to the state superintendent, certified copies of all resolutions and proceedings of the board of supervisors, of which he is clerk, passed or had during the preceding year, relating to the raising of any money for school purposes, and to report the amount to be raised in each town in such county.

To transmit to secretary of state names and boundaries of new towns.

SEC. 52. The clerk of the board of supervisors of each county in this state, shall, as often as a new town shall be organized in his county, or the boundaries of any town therein shall be altered, and immediately thereafter, make out and transmit to the secretary of state, a certified statement of the names and boundaries of the towns so organized, and of the boundaries of any town, the boundaries of which shall have been so altered.

His compensation

SEC. 53 Such clerk shall receive a reasonable compensation for such services as he may perform as clerk of the board, where no specific fees are allowed therefor, to be fixed by the board, and paid by the county.

Clerk of the Circuit Court.

Clerk of circuit court to be chosen for two years, and to execute bond.

SEC. 54. There shall be a clerk of the circuit court, chosen in each county organized for judicial purposes, for the term of two years, and when elected, or appointed as hereinafter provided, he shall, before he enters upon the duties of his office, execute to the people of this state, and file with the treasurer of his county, a bond, with two or more sureties, in a penal sum of not less than two thousand dollars, to be approved by such treasurer, with a condition as follows, to wit:

Condition of bond.

"Whereas, the above bounden   was elected (or appointed, as the case may be,) to the office of clerk of the circuit court of the county of   , on the   day of   : Now, therefore, the condition of the above obligation is such, that if the said   shall faithfully, truly, and impartially enter and record all orders, decrees, judgments and proceedings of the courts whereof he shall officiate as clerk, and faithfully and impartially perform all other duties of his said office, and shall pay over all monies that may come into his hands as such clerk, as required by law, and shall deliver to his successor in office all the books, records, papers and other things belonging to his said office, then the above obligation shall be void, otherwise, to be and remain in full force.

If vacancy, judge to appoint.

Sec. 55. In case of a vacancy in the office of such clerk, the judge of the circuit court shall appoint a clerk, who shall hold his office until his successor is elected and qualified.

Term of office, when to commence.

Sec. 56. The regular term of office of the clerks of the circuit court, shall commence on the first day of January, succeeding their election; but those elected to supply vacancies, may qualify and enter upon the duties of their office, immediately after being notified of their election.

His duties and fees, &c.

Sec. 57. Such clerk shall perform all the duties of clerk of the circuit court, and such other duties as shall be assigned him by law; and he shall receive such fees as shall be allowed by law for specific services, and such compensation for other services as the county board of supervisors shall allow.

To appoint a deputy with approbation of judge.

Sec. 58. Each clerk of the circuit court shall appoint a deputy, which appointment shall be approved by the judge of the circuit court, but may be revoked by such clerk at his pleasure; and such appointment and revocation shall be in writing, under his hand, and filed in his office; and in the absence of the clerk from his office, or from the court, the deputy may perform all the duties of such clerk.

Clerk to be responsible for acts of his deputy, and duties of deputy.

Sec. 59. The clerk of the circuit court and his sureties, shall be responsible, on his official bond, for the acts of his deputy; and in case of the death, resignation, or removal of the clerk, or in case of a vacancy by any other means in the said office of clerk, the deputy shall perform all the duties of such clerk until such vacancy shall be filled by an appointment or an election.

Judge to direct what books to be kept by clerk, and same to be procured.

Sec. 60. The judge of the circuit court shall direct what books are necessary to be kept and used by such clerk, and the same shall be procured by the board of supervisors, or such clerk, at the expense of the county.

Clerk to transmit to secretary of state account of taxes on suits, and pay same to judge when required, &c.

Sec. 61. Every clerk of the circuit court shall, at the expiration of every three months after the commencement of his term of office, transmit to the secretary of state an account in writing, verified by his affidavit, to be filed with such account, of all monies received by him for taxes on suits commenced in the circuit court during the preceding three months, specifying in such account, the title of each suit and the proceeding on which such taxes have been received; and shall, as often as required by the judge of the circuit court, pay over to him all monies in his hands, received for taxes on suits, who shall execute to the said clerk duplicate receipts therefor, one of which shall be filed and preserved in his office, and the other shall be transmitted by mail to the secretary of state, who shall charge in his books the amount specified in such receipt to the account of such judge, and deduct the same from his next quarter's salary. And it is hereby made the duty of all clerks of the circuit courts, whose duty it was to receive a tax of one dollar on suits as provided by section seventeen of an act entitled "An act to provide for the election of judges, and for the

To pay over to successor moneys now in their hands.

CHAPTER 10.

classification and organization of the judiciary of the state of Wisconsin," approved June twenty-ninth, one thousand eight hundred and forty-eight, to pay over to their successors in office, within twenty days from the passage of this chapter, all moneys which may be or should have been by said clerks received as provided by said act.

Of District Attorneys.

District attorney to be chosen for two years, to take oath and file bond.

SEC. 62. A district attorney shall be elected in each county in this state, organized for judicial purposes, who shall hold his office for the term of two years, and shall, before he enters upon the duties of his office, take the constitutional oath of office, and shall execute a bond to the board of supervisors of his county, in the penal sum of one thousand dollars, with two or more sufficient sureties, to be approved by the clerk of such board, which bond shall be conditioned for the faithful performance of his duties as such district attorney, and that he will pay over to the treasurer of his county, in the manner prescribed by law, all moneys which shall come into his hands by virtue of his office, and shall deposite such oath and bond in the office of the clerk of such board of county supervisors.

His duties.

SEC. 63. It shall be the duty of the district attorneys of the several counties to appear in the circuit courts of their respective counties, and prosecute or defend on behalf of the people, all suits, applications, or motions, civil, or criminal, in which the state or county is interested or a party.

When to appear for state or county before magistrates

SEC. 64. Each district attorney shall, when requested by any magistrate of his county, appear on behalf of the state, before any such magistrate, other than those exercising the police jurisdiction of incorporated cities and villages, and prosecute all complaints made in behalf of the state, except for common assault and battery of which such magistrate shall have jurisdiction; and upon the like request shall appear before such magistrate and conduct any criminal examination which may be had before such magistrate; and he shall also prosecute or defend all civil suits before magistrates, in which the county is a party, or interested.

When to give opinion to board of supervisors and civil officers of county

SEC. 65. The district attorney shall without fee or reward, give opinions and advice to the county board of supervisors, and other civil officers of their respective counties, when requested by such board or officers, upon all matters in which the county is interested, or relating to the discharge of the official duties of such board or officers in which the state or county may have an interest.

Their salary

SEC. 66. The district attorneys shall severally receive such salary for their services, as the board of supervisors of the proper county shall allow; but the salary of no district attorney shall be increased or diminished during the term for which he shall have been elected.

Not to receive fee, nor be concerned as attorney or counsel in certain cases, nor hold judicial office.

SEC. 67. No district attorney shall receive any fee or reward from or on behalf of any prosecutor, or other individual, for services in any prosecution or business to which it shall be his official duty to attend; nor be concerned as attorney or counsel for either party, other than for the state or county, in any civil action depending upon the same state of facts upon which any criminal prosecution commenced, but undetermined, shall depend, nor shall any district attorney, while in office, be eligible to or hold any judicial office whatsoever.

Court may appoint person to act as district attorney in certain cases.

Sec. 68. Each of the circuit courts, whenever there shall be no district attorney for the county, or when the district attorney shall be absent from the court, or unable to attend to his duties, may, if the court shall deem it necessary, appoint by an order to be entered in the minutes of such court, some suitable person to perform for the time being, the duties required by law to be performed by the district attorney, and the person so appointed shall thereupon be vested with all the powers of such district attorney for that pupose.

To give duplicate receipts for moneys received for fines, &c., one of which to be filed

Sec, 69. It shall be the duty of every district attorney, whenever he shall receive any moneys for fines, recognizances, penalties or costs, to deliver to the officer or person paying the same, duplicate receipts, one of which shall be filed by such officer or person, in the office of the county treasurer.

To file with county treasurer an account of moneys received for fines, &c, and pay over same.

Sec. 70. Every district attorney shall, on or before the eighth day of November in each year, file in the office of the county treasurer, an account in writing, verified by his affidavit to be filed with said account, of all monies received hy him during the preceding year, by virtue of his office, for fines, recognizances, forfeitures, penalties or costs; and he shall specify in such account the name of each person from whom he may have received such moneys, the particular amount paid by each person, and the cause for which each payment was made, and shall at the same time pay over such moneys to the county treasurer.

Penalty for neglect

Sec. 71. Whenever any district attorney shall refuse or neglect to account for, and pay over, the moneys so received by him, as required by the preceding section, he shall be liable to a fine of not less than fifty, nor more than two hundred dollars; and it shall be the duty of the county treasurer to cause a suit to be instituted upon the bond of such district attorney for the recovery of the moneys so received and unpaid by him.

To attend grand jury upon their request, issue process, &c.

Sec. 72. Whenever required by the grand jury, it shall be the duty of the district attorney of the county to attend them for the purpose of examining witnesses in their presence, or of giving them advice in any legal matter, and to issue subpœnas and other process to bring up witnesses, and draw bills of indictment.

Of Judges of Probate.

Judge of probate to take oath of office, and execute bond.

Sec. 73. The judge of probate shall, before he enters upon the duties of his office, take the oath of office prescribed by the constitution, and shall execute to the people of this state a bond in the penal sum of three thousand dollars, with two or more sufficient sureties, to be approved by the county treasurer, conditioned for the faithful performance of the duties required of him by law, and for the faithful application and payment of all monies and effects that may come into his hands in the execution of the duties of his office; which bond, with the approval of such treasurer indorsed thereon, together with such oath, shall be filed with said treasurer.

CHAPTER 10.

To keep a record which shall be open to inspection without fee. His compensation.

SEC. 74. The judge of probate shall keep a record of all orders, decrees, and other official acts made or done by him, which record shall be open to the inspection of all persons, without charge, and he shall receive such compensation as shall be allowed by law.

Of Court Commissioners.

Court commissioners, their term of office and powers.

SEC. 75. The circuit judges in each of the judicial circuits within the state, may appoint in each of the organized counties in their respective circuits, a court commissioner, who shall hold his office for two years from the time of his appointment, unless removed by such judge. Such commissioner shall have power to issue subpœnas for witnesses to come before him, and to issue attachments and other necessary process to compel their attendance in case of disobedience thereof; to administer oaths and to take depositions and testimony in cases at law or in equity, and to return and report such depositions and testimony to the court having jurisdiction of such cases; to take acknowledgments of deeds and other instruments of writing; to allow writs of attachment and certiorari; and in civil actions, may determine upon the amount and sufficiency of bail, in cases in which bail is required by law; to tax costs in cases at law or in equity, and to do such other things as are required by the court, or as are necessary and proper for the full exercise of the powers hereby granted.

Of Sheriffs.

Sheriffs to be elected for two years, and to execute bond.

SEC. 76. A sheriff shall be elected in each county in this state, organized for judicial purposes, for the term of two years, and shall, before he enters upon the duties of his office, execute to the people of this state a bond, with at least three sureties, being freeholders, in such penal sum, not less than five thousand dollars, nor more than twenty-five thousand dollars, as the officers approving the same shall specify; which bond shall be approved by the clerk of the circuit court and judge of probate of the same county, and filed with such clerk; and no person shall be received as such surety, who, the persons approving such bond believe, is not worth at least the sum of two thousand dollars, over and above all debts, notwithstanding such surety may have so sworn.

Condition of bond.

SEC. 77. The condition of such bond shall be in substance as follows: "Whereas the above bounden was elected to the office of sheriff of the county of , on the day of : Now, the condition of the above obligation is such, that if the said shall well and faithfully in all things perform and execute the duties of the office of sheriff of the said county of , during his continuance in office, by virtue of the said election, without fraud, deceit, or oppression, and shall pay over all monies that may come into his hands as such sheriff, and shall deliver to his successor all writs, papers and other things pertaining to his office which may be so required by law, then the above obligation shall be void, otherwise to be and remain in full force."

Affidavit to be taken by surety.

Sec. 78. Before such bond shall be approved, an affidavit shall be endorsed thereon, or attached thereto, stating that each surety named therein is a freeholder within the state, and is worth at least two thousand dollars over and above all debts, which affidavit shall be subscribed by each surety, and taken and certified before some officer authorized to administer oaths.

Sheriff to appoint under-sheriff, who shall be a deputy.

Sec. 79. The sheriff of each county shall, as soon as may be after entering upon the duties of his office, appoint some proper person under sheriff of the same county, who shall also be a general deputy, to hold during the pleasure of such sheriff; and as often as a vacancy shall occur in the office of such under-sheriff, or he become incapable of executing the same, another shall in like manner be appointed in his place.

When under-sheriff shall execute the office of sheriff; what deemed breach of bond.

Sec. 80. Whenever a vacancy shall occur in the office of sheriff of any county, the under sheriff of such county shall in all things execute the office of sheriff, until a sheriff shall be elected and qualified; and any default or misfeasance in office of such under sheriff, in the meantime, as well as before such vacancy, shall be deemed to be a breach of the condition of the bond given by the sheriff who appointed him, and also a breach of the condition of the bond executed by such under sheriff to the sheriff by whom he was appointed.

Sheriff may appoint deputies, and shall be responsible for their acts

Sec. 81. Each sheriff may appoint such and so many deputies as he may think proper, for whose official acts, and those of his under sheriff, he shall be responsible, and may revoke such appointments at his pleasure; and persons may also be deputed by any sheriff or under sheriff, in writing, to do particular acts; and the sheriff and his sureties shall be responsible, on his official bond, for the default or misconduct in office of his under sheriff and deputies.

Appointments to be in writing and filed.

Sec. 82. Every appointment of an under sheriff, or of a deputy sheriff, and every revocation of such appointment, shall be in writing, under the hand of the sheriff, and shall be filed and recorded in the office of the clerk of the circuit court of the county; but this section shall not extend to any person who may be deputed by any sheriff or under sheriff to do a particular act only.

Sheriff to have charge of jail and prisoners.

Sec. 83. The sheriff shall have the charge and custody of the jails of his county, and of the prisoners in the same; and shall keep them himself, or by his deputy or jailer, for whose acts he and his sureties shall be responsible.

To serve all process, and attend circuit court

Sec. 84. The sheriff in person, or by his under sheriff, or deputies, shall serve or execute according to law, all process, writs, precepts, and orders, issued or made by lawful authority, and to him directed, and shall attend upon the circuit court held in his county during its session.

To preserve the peace, and suppress riots, &c, and may call out power of the county.

Sec. 85. It shall be the duty of sheriffs, and of their under sheriffs and deputies, to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, routs, riots, unlawful assemblies, and insurrections; for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they and every coroner and constable mny call to their aid such persons or power of their county as they may deem necessary.

Former sheriff to deliver to his successor, jail, prisoners, process, &c.

SEC. 86. Whenever a new sheriff shall be elected, and shall have qualified as required by law, the former sheriff shall, upon demand, deliver to him the jail and other property of the county, and all prisoners in such jail, and all writs, process, orders and other papers belonging to his office, and in his possession, or in that of his under sheriff and deputies, except as provided in the next succeeding section; and upon the delivery thereof, such new sheriff shall execute to the former sheriff a receipt therefor.

What process may retain and execute

SEC. 87. Sheriffs, under sheriffs and deputies may execute and return all such writs and process as shall be in their hands at the expiration of their term of office, or at the time of their removal from office, which they shall have begun to execute by service, levy, or the collection of money thereon; and in case of a vacancy in the office of sheriff, his under sheriff and deputies, then in office, having any writ or process in their hands at the time such vacancy shall occur, shall have the same authority, and be under the same obligation to serve, and execute and return the same as if such sheriff had continued in office.

Default of deputy or jailer, after death of sheriff, to be a breach of his bond.

SEC. 88. Any default or misconduct in office, of any deputy sheriff or jailer, after the death, resignation, or removal of any sheriff, by whom he was appointed, shall be adjudged a breach of the bond of such sheriff.

Action may be prosecuted against executors of sheriff

SEC. 89. Any action for the default or misconduct of a sheriff, his under sheriff, jailer, or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

Writs and papers may be served on sheriff by leaving same at his office

SEC. 90. Every writ, notice, or other paper which shall be required to be delivered to, or served on any sheriff, may be served by leaving the same at his office during the hours it is required to be kept open; but if there be any person belonging to such office therein, such writ, notice, or other paper, shall be delivered to such person; and every such service shall be deemed equivalent to a personal delivery to or service on such sheriff.

Sheriff, &c., arresting person in one county may pass across another.

SEC. 91. Any sheriff or other officer who shall have legally arrested any person in any county, may pass across and through such parts of any other county or counties, as shall be in the ordinary route of travel, from the place where such person shall have been arrested, to the place where he is to be conveyed, according to the command of the process by which such arrest shall have been made.

Not to be deemed an escape, nor the prisoner or officers liable to arrest

SEC. 92. Such conveyance of such prisoner shall not be deemed an escape, nor shall the prisoner so conveyed, or the officers having him in custody, be liable to arrest on any civil process while passing through such other county or counties.

Duty of keeper of jail

SEC. 93. It shall be the duty of the keeper of every jail to present to the circuit court, held in his county, at the commencement of each term thereof, a statement showing the name of every prisoner in his custody, the time when and the offence for which, and by what authority he was committed.

When fees of sheriff to be paid out of state treasury.

SEC. 94. Whenever a sheriff shall be required, by any statutory provision, to perform any service in behalf of the people of this state, and for their benefit, which shall not be chargeable to his county, or to some officer or other person, his account for such services shall be paid out of the state treasury.

No sheriff, deputy, or coroner to practice as attorney or counsel.

SEC. 95. No sheriff, deputy sheriff or coroner, shall appear or practice as attorney, solicitor or counsellor, in any court; nor shall they draw or fill up any writ, pleading or proceeding, for any party in a suit; nor shall they, with intent to be employed in the collection of any demand, or the service of any process, advise or counsel any person to commence any suit or proceeding; and either of said officers, for a violation of any provision of this section, shall forfeit a sum not exceeding fifty dollars.

When sheriff liable to fine or attachment, and action for damages.

SEC. 96. Whenever any sheriff shall neglect to make due return of any writ or other process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal; such fine, however, not to exceed two hundred dollars; and also to an action for damages to the party aggrieved.

Sheriff not to receive greater fees than allowed by law.

SEC. 97. No sheriff shall directly or indirectly, ask, demand, or receive, for any services or acts to be by him performed, in the discharge of any of his official duties, any greater fees than are allowed by law, on pain of forfeiting treble damages to the party aggrieved, and of being fined in a sum of not less than twenty-five dollars, and not more than two hundred and fifty dollars.

When under-sheriff or coroner execute office of sheriff, to be responsible same as sheriff.

SEC. 98. Whenever any under sheriff, or coroner, shall execute the office of sheriff, the under sheriff, or coroner, so executing such office, shall perform all the duties, and be subject to all the liabilities and penalties imposed by law upon a sheriff duly elected and qualified.

Of Coroners.

Coroner to be elected for two years, and to execute bond.

SEC. 99. A coroner shall be elected in each county in this State for the term of two years, who shall, before he enters upon the duties of his office, give bond to the people of this state, in such penal sum, not less than five hundred dollars, nor more than ten thousand dollars, with such sufficient sureties, not less than two, as the treasurer of his county shall direct and approve, the condition of which bond shall be in substance the same as that required to be given by the sheriff, except in the description of the office, and such bond shall be filed with the clerk of the circuit court of the proper county.

When coroner to act as sheriff.

SEC. 100. When there shall be no sheriff or under sheriff in any county organized for judicial purposes, it shall be the duty of the coroner in such county to exercise all the powers and duties of sheriff of his county until a sheriff shall be elected and qualified; and when the sheriff, for any cause, shall be committed to the jail of his county, such coroner shall be keeper thereof during the time the sheriff shall remain a prisoner therein.

When to serve process, &c.

SEC. 101. Every coroner shall serve and execute process of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party in the case, or whenever affidavit shall be made and filed as provided in the succeeding section, and in all such cases he shall exercise the same powers, and proceed in the same manner as prescribed for the sheriff in the performance of similar duties; and in such cases the coroner of any county attached to an-

CHAPTER 10

other for judicial purposes, may, in like manner, serve and execute such process, and perform such duties within his own county; and in all such cases, coroners and their sureties shall be liable, in the same manner, and to the same extent, as sheriffs are made liable in similar cases.

Ib.

SEC. 102. Whenever any party, his agent, or attorney, shall make and file with the clerk of the circuit court, an affidavit, stating that he believes the sheriff of such county will not, by reason either of partiality, prejudice, cousanguinity or interest, faithfully perform his duties in any suit commenced or about to be commenced, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same in like manner as the sheriff might, or ought to have done.

Of the County Treasurer.

County treasurer to be elected for two years, and to execute bond.

SEC. 103. A county treasurer shall be elected in each county for the term of two years, and shall, before he enters upon the duties of his office, execute to the county board of supervisors of his county, a bond, with three or more sufficient sureties, to be approved of by such board, and in such penal sum as they shall direct, which bond, with the approbation of the board endorsed thereon by their clerk, shall be filed with him; and in case the board of supervisors shall not be in session in time for any county treasurer to present his bond for their approval, as above specified, or he shall be unable for any cause to present his bond at any regular meeting of the board, after due notice of his election, then it may be lawful for such treasurer to present his bond to the chairman and clerk of the board of county supervisors for their approval, and their approval endorsed thereon shall have the same effect as if done by the board of supervisors, and in such cases where the board shall not have fixed the penal sum of such bond, it shall not be less than twice the amount of all moneys directed by the board to be levied upon their county and to be paid to such treasurer during the year.

Condition of bond.

SEC. 104. The condition of such bond shall be in substance, as follows:

"Whereas, the above bounden   was elected to the office of treasurer of the county of   on the   day of   ; Now, therefore, the condition of the above obligation is such, that if the said   and his deputy, and all persons employed in his office, shall faithfully and properly execute the duties of the said office, and if the said   shall pay, according to law, all moneys which shall come to his hands as treasurer, and will render a just and true account thereof whenever required by the said board of supervisors, or by any provision of law, and shall deliver over to his successor in office, or to any other person authorized by law to receive the same, all moneys, books, papers, and other things appertaining or belonging to his said office, then the above obligation shall be void, otherwise to be and remain in full force.

May appoint a deputy.

SEC. 105. The county treasurer may appoint a deputy, who in the absence of the treasurer from his office, or in case of a vacancy in said office, or any disability of the treasurer to perform the duties of his office, may perform all the duties of the office of treasurer until such vacancy be filled, or such disability be removed.

Board of supervisors may appoint treasurer in certain cases.

SEC. 106. In case the office of county treasurer shall become vacant, or in case the treasurer from any cause shall be incapable of discharging the duties of his office, the county board of supersors may, if in their opinion the interests of the county require it, appoint a suitable person to perform the duties of such treasurer; and the person so appointed, upon giving a bond, with the like sureties and condition as that required in county treasurers' bonds, and in such sum as said board shall direct, shall be invested with all the powers, and shall perform all the duties of such treasurer, until such vacancy be filled or such disability be removed.

Who not to hold the office of treasurer.

SEC. 107. No person holding the office of sheriff, judge of probate, district attorney, clerk of the circuit court, or clerk of the board of supervisors, nor any member of the board of supervisors, shall hold the office of county treasurer.

To receive money belonging to county, and to pay same only on order of the board.

SEC. 108. It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatever source they may be derived, and all other moneys which by law are directed to be paid to him; and all moneys received by him for the use of the county, shall be paid by him only on the order of the board of supervisors, signed by their clerk, and countersigned by their chairman, except when special provision for the payment thereof is, or shall be otherwise made by law.

To keep account of receipts and expenditures, and to settle accounts when required.

SEC. 109. The said treasurer shall keep a just and true account of the receipt and expenditure of all moneys which shall come into his hands by virtue of his office, in a book or books to be kept by him for that purpose, which books shall be open at all times to the inspection of the county board of supervisors, or any member thereof, and to all county and state officers; and at the annual meeting of said board of supervisors, or at such other time as they direct, he shall settle with them his accounts as treasurer, and for that purpose he shall exhibit to them all his books and accounts, and all vouchers relating to the same, to be audited and allowed.

Order of preference in paying county orders. To be received of town treasurers.

SEC. 110. County orders properly attested shall be entitled to a preference as to payment, according to the order of time in which they may be presented to the county treasurer; but when two or more orders are presented at the same time, precedence shall be given to the order of the oldest date: but every county treasurer shall receive of town treasurers all county orders issued in such county, which such town treasurers may present in payment of county taxes to the amount of the county taxes collected by any such town treasurer in his town, in the year for which such orders are offered in payment.

To transmit to State treasurer, moneys received for licenses and fines under oath.

SEC. 111. The county treasurer shall, at the same time he is required by law to pay the state taxes to the state treasurer, transmit to such treasurer a particular statement, verified by his affidavit, of all moneys received by him during the preceding year for licenses, and for fines, penalties, or otherwise, where the same are by law payable into the state treasury, and at the same time he shall also pay to such treasurer the amount thereof, after deducting his compensation, in the same manner that state taxes are required to be paid: such affidavit shall be signed and sworn to by said treasurer, and endorsed upon, or attached to such statement, and returned with the same.

Books and papers to be delivered to his successor upon oath.

SEC. 112. Upon the resignation, or removal from office, of any county treasurer, all the books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall be delivered to his successor in office, upon the oath of such preceding treasurer, or in case of his death, upon the oath of his executors or administrators.

Penalty for neglect.

SEC. 113. If any such preceding county treasurer, or in case of his death, if his executors or administrators shall refuse or neglect to deliver such books, papers and moneys upon oath, when lawfully demanded, every such person shall forfeit a sum of not less than one hundred dollars, nor more than five hundred dollars, and he shall also be liable on his official bond for such refusal or neglect.

To insure county buildings, and to receive insurance moneys, &c.

SEC. 114. When directed by the board of supervisors, the county treasurer shall cause to be insured, at the expense of the county, any or all of the public buildings belonging to the same, in the name of himself and his successors in office, or otherwise, as the said board shall direct; and in case of the destruction of, or damage done to the buildings so insured, such treasurer shall demand and receive the moneys due on account of such insurance, and pay the same into the county treasury, and such money shall be applied in rebuilding or repairing such public buildings.

His compensation.

SEC. 115. The county treasurer shall receive for his services two per cent on all moneys received and paid out by him as treasurer; that is, one per cent for receiving, and one per cent for paying out the same, except on moneys arising from the sale of lands or other property belonging to the county, upon which he shall receive only one half the above fees for receiving and paying out the same; but the board of supervisors of any county may, in their discretion, so alter the above rate of compensation of the treasurer of their county, at any time before he has entered upon the duties of his office, increasing or diminishing the same, as they shall deem just and reasonable.

His fees on moneys payable into state treasury.

SEC. 116. Every county treasurer shall retain two per cent in full for his fees and services in receiving and paying into the state treasury, all moneys received by him payable into such treasury, except state taxes, which fees shall be allowed him by the state treasurer; and on all state taxes collected in his county which he shall receive and pay into the state treasury, he shall be allowed a compensation as provided in the preceding section, to be paid out of the county treasury, which shall be in full for such services.

When his bond forfeited, board to cause it to be put in suit.

SEC. 117. Whenever the condition of the county treasurer's bond shall be forfeited, to the knowledge of the board of supervisors of the county, they shall cause such bond to be put in suit.

Of Registers of Deeds.

Register of deeds elected for two years, and to execute bond.

SEC. 118. A register of deeds shall be elected in each county in this state, for the term of two years, and shall, before he enters upon the duties of his office, execute to the people of this state, and file with the treasurer of his county, a bond in the penal sum of three thousand dollars, with two or more sufficient sureties, to be approved by such treasurer, with a condition in substance as follows, to wit: "Whereas the above bounden was elected to the office of register of deeds of the county of , on the day of : Now, therefore, the condition of the above obligation is such, that if the said shall faithfully, correctly, and impartially perform all the duties of his said office, and shall deliver to his successor in office, all books, records, maps, deeds, mortgages, papers, and other things belonging to his said office, then the above obligation shall be void, otherwise to be and remain in full force."

To appoint a deputy.

SEC. 119. The register of deeds shall appoint a deputy, who shall hold his office during the pleasure of the register; such appointment shall be in writing, filed and recorded in the office of such register of deeds; and the register so appointing him, and his sureties, shall be responsible for the faithful performance of his duties by such deputy.

When deputy to perform duties of register.

SEC. 120. In case of a vacancy in the office of register of deeds, or his absence, or inability to perform the duties of his office, such deputy shall perform the duties of register during the continuance of such vacancy, absence or inability.

Duties of register.

SEC. 121. The register of deeds shall have the custody of, and shall safely keep and preserve all the books, records, deeds, maps and papers deposited or kept in his office; he shall also record or cause to be recorded correctly, and in a plain and distinct hand writing, in suitable books to be provided and kept in his office, all deeds, mortgages, maps, instruments and writings authorized by law to be recorded in his office, and left with him for that purpose, and shall perform all other duties required of him by law.

What to indorse on writings received for record.

SEC. 122. He shall endorse upon each instrument or writing by him received for record as aforesaid, the time when it was received, noting the day, hour, and minute of reception, and the volume in which, and the page where the same is recorded.

To keep a general index.

SEC. 123. Every register of deeds shall keep a general index, each page of which shall be divided into eight columns, with heads to the respective columns, as follows, to wit:

Time of reception.	Name of grantor.	Name of grantee.	Description of tract.	Name of instrument.

Volume and page where recorded.	To whom delivered.	Fees received.

Entries to be made in index.

SEC. 124. Such register shall make correct entries in said index of every instrument or writing received by him for record, under the respective and appropriate heads, entering the names of the grantors in alphabetical order; and he shall, immediately upon the receipt of every such instrument or writing for record, enter in the appropriate column, and in the order of time in which it was received, the day, hour, and minute of reception, and the same shall be considered as recorded at the time so noted.

CHAPTER 10.

To keep an index to each volume.

SEC. 125. He shall keep an index to each volume of records kept in his office, showing on one page the names of the grantors in each instrument or writing recorded, in alphabetical order, and the names of the grantees and the volume and page where the same is recorded; and showing on another page the names of the grantees in each such instrument or writing, in alphabetical order, and the names of the grantors, and the volume and page, set down in like manner.

Copies of papers, &c., to be evidence.

SEC. 126. Copies of all papers duly filed in the office of the register of deeds, and transcripts from the books of records kept therein, certified by him, shall be prima facie evidence in all cases.

Of County Surveyors.

County surveyors to be elected for two years, to take oath and give bond.

SEC. 127. The qualified electors in each organized county in this state shall at the annual election in eighteen hundred and fifty, and biennially thereafter, elect a surveyor who shall reside in the county for which he shall have been elected, and shall previous to entering upon the duties of his office, take and subscribe an oath or affirmation, faithfully to discharge the duties of the same, and shall give bond to the clerk of the board of county supervisors of the proper county, in the sum of one thousand dollars, conditioned for the faithful discharge of his duties.

May appoint deputies, who shall take oath.

Certificate of surveyor and deputies to be evidence.

If surveyor interested, court to appoint.

SEC. 128. The said surveyor may appoint such number of deputies as he may think proper, who shall severally take an oath or affirmation of office, and for the faithful performance of whose duties, he shall be responsible. The certificate of the county surveyor elected as aforesaid, or any of his deputies, shall be admitted as legal evidence in any court within this state, but the same may be explained or rebutted by other evidence; and if said surveyor, or either of his deputies, be interested in any tract of land, a survey of which becomes necessary, such survey may be executed by any competent person to be appointed by the court before which such matter shall be pending.

Duty of surveyor.

SEC. 129. It shall be the duty of said surveyor, by himself or one of his deputies, to execute any survey which may be required by order of any court, or upon application of any individual or corporation.

To keep a record and preserve field notes, &c.

SEC. 130. The said surveyor shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided by the county supervisors for that purpose, which he shall transmit to his successors in office; he shall also number such surveys progressively, and shall preserve a copy of the field notes and calculations of each survey, endorsing thereon its proper number; a copy of which, and also a fair and accurate plot, together with a certificate of survey, shall be furnished by said surveyor to any person requiring the same.

His fees.

SEC. 131. The said surveyor and his deputies may demand and receive for their services the following fees, to wit: for the first mile actually run with a compass and chain, three dollars; for each succeeding mile thereafter, one dollar; for each mile run with a compass alone, one dollar; for every in and out lot laid out and plotted in any town, or addition thereto, thirty-seven and one half cents; for a plot and certificate, except town plots, fifty cents; for recording a survey, fifty cents.

Fees of chainman and marker; they to be sworn.

SEC. 132. If the party for whom the survey is made does not furnish the chainman and marker, then the county surveyor, or his deputies, may employ the necessary chainmen and markers, and shall receive one dollar and fifty cents per day for each chainman and marker so employed; and each chainman and marker employed in any survey by any county surveyor or his deputies, shall, before they commence the duty assigned them, take an oath or affirmation before the said surveyor, who is hereby authorised to administer the same, faithfully and impartially to discharge the duties of chainman or marker as the case may be.

Courses to be expressed according to true meridian.

SEC. 133. In all surveys the courses shall be expressed according to the true meridian, and the variation of the magnetic meridian from the true meridian shall be expressed on the plot, with the year, month, and day of the same.

If vacancy, board of supervisors to appoint.

SEC. 134. If the office of county surveyor be at any time vacant in any county, the board of county supervisors for such county is hereby empowered to appoint and authorise some competent person to perform the duties of surveyor in such county, until a county surveyor shall be duly elected.

To hold office two years.

SEC. 135. Each surveyor elected as aforesaid, shall hold his office for the term of two years, and until his successor in office shall be elected and qualified.

Sections and subdivisons, how to be divided.

SEC. 136. Whenever a surveyor is required to make a subdivision of a section as established by the United States survey, he shall proceed as follows, except when the section is fractional: commencing at either quarter section corner of the section, he shall run north or south and east or west across said section and establish a common centre therefor, at which a post shall be firmly fixed and driven into the ground, and if practicable, two bearing trees shall be marked with a suitable instrument, one quarter S. and their course and distance from the said post noted in the plot and field notes; any less subdivision than a quarter section, shall be made by proceeding in the same manner, except in fractional sections, the corners of which shall be established and noted as before provided for, the surveyor denoting the quantity upon the bearing trees as one-eighth or one sixteenth of a section as the case may be.

Miscellaneous provisions concerning county officers.

Certain county officers to keep their offices at county seat, and keep same open

SEC. 137. Every sheriff, clerk of the circuit court, register of deeds, county treasurer, and clerk of the board of supervisors, shall keep his office at the seat of justice of his county; and in the office provided by the county, if any such has been provided, and if there be none established, then at such place as shall be fixed by special provisions of law, or if there be no such provision, then at such place as the county board of supervisors shall direct; and shall keep the same open during the usual business hours each day, Sundays excepted, and all books and papers required to be kept in their offices, shall be open for the examination of any person; and if any of said officers shall neglect to comply with the provisions of this section, he shall forfeit for each day he shall so neglect, the sum of five dollars.

When all county officers shall execute bond, and take oath of office

Sec. 138. Every county officer named in this chapter, shall, before entering upon the duties of his office, and within twenty days after receiving official notice of his election or appointment, or within twenty days after the commencement of the term for which he was elected or appointed, execute and deposite his official bond as prescribed by law; and every such officer shall also, within the same time take and subscribe the oath of office prescribed by the constitution of this state, before some officer authorised to administer oaths and deposite the same with his official bond, to be filed and preserved therewith.

Deputies to take and file oath of office.

Sec. 139. Every deputy appointed by any of said officers, shall, before entering upon his duties under such appointment, take and subscribe the like oath of office as that above required of the officer appointing him, and shall deposite the same in the office where the bond of such officer is deposited, and in case he shall neglect to take and deposite such oath as aforesaid, he shall forfeit and pay one hundred dollars.

Copies of papers, &c., deposited with certain county officers, to be evidence.

Sec. 140. Copies of all documents, writs, proceedings, instruments, papers and writings duly filed or deposited in the office of any judge of probate, register of deeds, clerk of the circuit court county treasurer, or clerk of the board of supervisors, and transcripts from the books of records or proceedings kept by any of said officers, with the seal of his office affixed, shall be evidence in all cases, equally and in like manner as the originals.

County officers subject to removal.

Sec. 141. Every county officer named in this chapter shall hold his office, subject to removal as provided by the constitution and laws of this state, until his successor is elected or appointed and qualified.

CHAPTER 11.

OF RESIGNATIONS, VACANCIES AND REMOVALS, AND OF SUPPLYING VACANCIES.

Section 1. Of resignations.
2. Of vacancies.
4. Of removals from office.
11. Of supplying vacancies.

Resignations.

Resignations to whom made.

Section 1. Resignations shall be made as follows:

1. By the governor and lieutenant governor, to the legislature:

2. By the secretary of state, treasurer, attorney general and state superintendent, and by all officers appointed by the governor alone, or by the governor by and with the advice and consent of the senate, or both branches of the legislature, or by the legislature, without the concurrence of the governor, to the governor:

3. By senators and members of assembly, to the presiding officers of their respective houses, who shall immediately transmit the

same to the governor; and to the governor, during the recess of the legislature:

4. By all other officers, who hold their offices by election, except officers elected at town meetings, to the officer or officers respectively authorized by law to order a special election to fill such offices respectively:

5. By all other officers holding their offices by appointment, to the body, board, or officer that appointed them.

Vacancies.

What events to create vacancy.

SEC. 2. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office:

1. The death of the incumbent:
2. His resignation:
3. His removal:
4. His ceasing to be an inhabitant of this state, or if the office be local, his ceasing to be an inhabitant of the district, county, town, city, or village for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged:
5. His conviction of any infamous crime, or of any offence involving a violation of his official oath:
6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law:
7. The decision of a competent tribunal, declaring void his election or appointment.

When governor to declare office vacant.

SEC. 3. The governor shall also declare vacant, the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer, for a breach of the condition of such bond.

Removals from Office.

The governor may remove certain county officers.

SEC. 4. The governor may remove from office any sheriff, coroner, register of deeds, or district attorney, giving to such officer a copy of the charges against him, and an opportunity of being heard in his defence.

Judge may remove clerk of circuit court.

SEC. 5. The judge of the circuit court shall have authority, in term time or in vacation, to remove any clerk of the circuit court in any county within his district, when in his opinion he is incompetent to execute properly the duties of his office; or when on charges and evidence such judge shall be satisfied that he has been guilty of official misconduct, or habitual or wilful neglect of duty, if, in the opinion of such judge, such misconduct or neglect shall be a sufficient cause for removal; but no such clerk shall be removed for such misconduct or neglect, unless charges thereof shall have been preferred to said judge, and notice of the hearing, with a copy of the charges, delivered to such clerk, and a full opportunity given him to be heard in his defence.

Board of supervisors may remove their clerk.

SEC. 6. The board of supervisors of any county may remove the clerk of their board, when in their opinion, he is incompetent to execute properly the duties of his office; or when on charges and evidence it shall appear to said board that he has been guilty of official misconduct, or habitual or wilful neglect of duty, if in the opinion of said board such misconduct or neglect shall be a sufficient cause for removal; but no such clerk shall be removed for such misconduct or neglect, unless charges thereof shall have been preferred to said board, and notice of the hearing, with a copy of the charges delivered to such clerk, and an opportunity given him to be heard in his defence; and in no case shall such removal be made unless two-thirds of all the supervisors entitled to a seat in such board shall vote therefor.

Collectors and receivers of public moneys may be removed by governor.

SEC. 7. Any collector or receiver of public moneys, appointed by the legislature, or by the governor, by and with the advice and consent of the senate, or of both branches of the legislature, except those officers for whose removal provision is otherwise made by law, may be removed by the governor, in case it shall appear to him on sufficient proofs, that such collector or receiver has in any particular wilfully violated his duty.

When certain officers appointed by the governor and legislature may be removed by the governor.

SEC. 8. All officers, except senators in congress and those specified in the preceding section, who are or shall be appointed by the governor, by and with the advice and consent of the senate, or of both branches of the legislature, or by the legislature without the concurrence of the governor, may, for official misconduct, or habitual or wilful neglect of duty, be removed by the governor upon satisfactory proofs, at any time during the recess of the legislature, and the vacancy filled by appointment made by him, until such vacancy shall be regularly supplied; but no such appointment shall extend beyond twenty days after the commencement of the next meeting of the legislature.

Governor may remove officers appointed by him.

SEC. 9. All officers who are or shall be appointed by the governor for a certain time, or to supply a vacancy, may be removed by him.

Legislature may remove officers appointed by them.

SEC. 10. All officers, except senators in congress, who are or shall be appointed by the legislature, or by either branch thereof, may be removed by such body or branch making the appointment.

Supplying Vacancies.

Governor may fill vacancies in certain state offices, &c.

SEC. 11. Whenever a vacancy shall occur in the office of secretary of state, state treasurer, attorney general, or state superintendent, the governor shall appoint a suitable person to perform the duties of either of said offices until such vacancy shall be regularly supplied; and the officer so appointed shall, before he enters upon the duties of his office, qualify in the same manner as required by law of the officer in whose place he shall be appointed.

Governor may fill certain vacancies during recess of legislature.

SEC. 12. Whenever a vacancy shall occur, during the recess of the legislature, in any office which the legislature, or the governor, by and with the advice and consent of the senate, or of both branches of the legislature, are authorized to fill by appointment, the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office for the time being.

When governor may fill vacancies in certain county offices.

SEC. 13. When at any time there shall be in either of the offices of judge of probate, register of deeds, district attorney, sheriff, or coroner, no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the governor to perform the duties of either of said offices for the time being.

Persons appointed to fill vacancies to qualify, &c.

SEC. 14. Each of the persons appointed in pursuance of either of the two last preceding sections, shall, before proceeding to execute the duties assigned him, qualify in the same manner as required by law of the officer in whose place he shall be appointed; and he shall continue to exercise and perform the powers and duties of the office to which he shall be so appointed, until such vacancy shall be regularly supplied as provided by law.

TITLE IV.

OF TOWNS AND TOWN OFFICERS; OF PENALTIES FOR VIOLATING ELECTION LAWS; AND OF FENCES AND POUNDS.

CHAPTER 12. Of towns and town officers.
13. Of penalties for violating election laws.
14. Of fences and fence viewers; of pounds and the impounding of cattle.

CHAPTER 12.

OF TOWNS AND TOWN OFFICERS.

SECTION 1. Of the powers and duties of towns.
6. Of town meetings.
21. Of the manner of conducting town meetings.
33. Of the canvass of votes.
38. Of town officers.
46. Of resignations and vacancies.
49. Of new organization of towns.
55. Of supervisors.
60. Of town clerk.
68. Of town board.
75. Of treasurer.
79. Of constables.
83. Of justices of the peace.
93. Of the compensation of town officers

Powers and Duties of Towns.

Organized towns to be bodies corporate. Their powers.

SECTION 1. Each organized town shall be a body corporate, and as such, may sue and be sued, and may appoint all necessary agents and attorneys in that behalf, and shall have power to purchase and hold real and personal estate for the public use of the inhabitants thereof, and to convey and dispose of the same; and to make all contracts that may be necessary and convenient for the exercise of its corporate powers, and any orders for the sale or disposal of its corporate property, which the inhabitants thereof may deem expedient.

Powers of electors at town meetings

SEC. 2. The qualified electors of each town shall have power, at any legal meeting thereof, to vote to raise such sum of money for the support of common schools, in addition to the amount required by law to be raised, as they may deem necessary; to vote to raise money for the repair and building of roads and bridges; for the support of the poor, and for defraying all proper charges and expenses arising in the town; and they may direct the institution or defence of suits in all controversies between such town and corporations, individuals, or other towns, and direct such sum of money to be raised for prosecuting and defending such suit, as they may deem proper.

May make orders and by-laws; may annex penalties,

SEC. 3. The qualified electors of each town may, at any legal meeting thereof, make such orders for the mangement of all the prudential affairs of the town as they may judge most conducive to the peace, welfare and good order thereof; and all such orders and by-laws for determining the time and manner in which cattle, horses, sheep, swine, or other animals, shall be restrained from going at large on highways, as they may deem proper; and they may annex to such orders and by-laws suitable penalties, not exceeding ten dollars for any one breach thereof, to be recovered before any justice of the peace of the town or county where the offence shall have been committed.

and may restrain cattle, &c., from going at large.

By-laws to be published, and to be binding.

Sec. 4. No by-law made by any town shall take effect before the same shall be published by posting up copies thereof in three of the most public places in the town; and such by-laws, duly made and so published, shall be binding upon all persons coming within the limits of the town, as well as upon the inhabitants thereof, and the same shall remain in force until altered or repealed at some subsequent town meeting.

Suits by or against towns.

Construction of conveyance to inhabitants.

Civil actions, before whom prosecuted

Sec. 5. All suits, acts, or proceedings, by or against a town in its corporate capacity, shall be in the name of such town; but every conveyance of land within the limits of such town, made in any manner, for the use or benefit of its inhabitants, shall have the same effect as if made to the town by name: any civil action which could be prosecuted by or against an individual, before a justice of the peace, may be prosecuted by or against a town before such justice.

Of Town Meetings.

Annual town meeting, and what officers to be elected thereat.

Sec. 6. The annual town meeting of the several towns in this state, shall be held on the first Tuesday in April in each year, and at such meeting there shall be an election of the following officers: three supervisors, one of whom shall be designated on the ballots as chairman, one town clerk, one treasurer, one superintendent of schools, so many justices of the peace as there are provided by law to be elected in each town, so many constables as shall be ordered by the meeting, not exceeding three in number, from one to three assessors, as may be ordered by the meeting, one sealer of weights and measures, and one overseer of highways for each road district in said town.

Who entitled to vote.

Sec. 7. Every person who shall have resided in the state one year immediately previous to any town meeting, and who shall be otherwise qualified to vote at a general election, may vote at such town meeting in the town where he resides.

Where annual town meeting to be held.

Sec. 8. The annual town meeting in each town shall he held at the place where the last annual town meeting was held, or at such other place therein as shall have been ordered at a previous meeting, or, when there has been no such previous meeting, at such place as shall be directed in the act or proceedings by which the town was organized.

When place of meeting may be adjourned.

Sec. 9. Whenever it shall become impossible or inconvenient to hold a town meeting at the place designated therefor, the board of inspectors, or a majority of them, after having assembled at or as near as practicable to such place, and opened the meeting, and before receiving any votes, may adjourn such meeting to the nearest convenient place for holding the same, and at such adjourned place forthwith proceed with the meeting.

Proclamation to be made of adjournment, &c

SEC. 10. Upon adjourning any town meeting, as provided in the last section, the board of inspectors shall cause proclamation thereof to be made, and shall station a constable, or some other proper person, at the place where such meeting was opened, to notify all electors arriving at such place that the meeting has been adjourned, and the place to which it has been adjourned.

Town meeting may be adjourned except for election of town officers.

SEC. 11. Any annual or special town meeting may be adjourned to any other day, and from time to time, for the purpose of transacting any proper business of the town, except for the election of town officers.

When first town meeting in new town to be held.

SEC. 12. The first town meeting after the organization of any town, shall be held on the first Tuesday in April, after its organization, and at such meeting there shall be an election for such officers as are by law to be elected at town meetings.

Proceedings at first town meeting in new towns.

SEC. 13. At the first town meeting in any town, the qualified electors present, between the hours of nine and ten o'clock in the forenoon, shall choose one of their number as chairman, one of their number as clerk, and two others of their number as inspectors, who shall severally take and subscribe the oath required of inspectors and clerks of general elections, and shall conduct the proceeding of such meeting as other town meetings are required by law to be conducted.

If new town fail to hold town meeting on the day specified, three voters may call meeting.

SEC. 14. If the inhabitants of any newly organized town shall fail to hold their first town meeting on the day specified by law, any three qualified voters of such town may call a meeting of the electors of such town, for such town election, at any time thereafter, by posting up notices thereof, at not less than three public places in such town, at least ten days previous to the holding of such meeting.

How oath administered to inspectors and clerk.

SEC. 15. At such first town meeting the chairman shall administer the oath of office to the other inspectors and to the clerk, and either of the other inspectors, after having been so qualified, may administer the like oath to the chairman.

Special town meetings may be held, and how called

SEC. 16. Special town meetings may be held for the purpose of choosing town officers, to fill any vacancies that may occur, also for the purpose of transacting any other lawful business, on a request being made to the clerk of the town, in writing, signed by twelve qualified voters in such town, specifying in such request the purposes for which such meeting is to be held.

Town clerk to record request, and give notice of special town meeting.

SEC. 17. Every town clerk with whom any such request shall be left, as mentioned in the preceding section, shall record the same, and immediately cause notices to be posted up in three of the most public places in the town, giving not less than fifteen nor more than twenty days notice of such meeting; and if there be a newspaper printed in such town, he shall cause a copy of said notice to be published therein, at least five days before the time appointed for such meeting.

Notices for special town meeting, what to specify.

SEC. 18. Every notice given for a special town meeting shall specify the purpose for which it is to be held; and if vacancies in office are to be filled at such meeting, such notice shall specify in what offices vacancies exist, how they occurred, and who were the last incumbents; and if the vacancy be in the office of justice of the peace, such notice shall also state at what time the legal term of office will expire.

Minutes of town meetings to be subscribed and filed.

Sec. 19. The minutes of the proceedings of every town meeting shall be subscribed by the clerk, and filed in the office of such clerk, within five days after such meeting.

Notice of annual town meeting not necessary.

Sec. 20. No notice of an annual town meeting shall be necessary.

Of the manner of conducting Town Meetings.

Chairman of supervisors to be chairman of town meeting, if present.

Sec. 21. The chairman of the supervisors in each town, shall be the chairman of the town meetings; or if he be absent, one of the other supervisors of the town shall serve as chairman; but if no one of the supervisors be present, then the qualified electors at such town meeting may choose a chairman.

Supervisors to be board of inspectors. Vacancies may be supplied by electors.

Sec. 22. The supervisors of each town shall be the board of inspectors of the election at the town meetings thereof, and if there shall be any vacancy in said board of inspectors, the electors present shall choose, viva voce, from the qualified electors of the town so many inspectors as there are vacancies in said board, and the persons so chosen shall be authorised to act as inspectors of such election.

Town clerk to be clerk of town meeting and his duties as such.

Vacancy may be supplied.

Sec. 23. The town clerk shall be the clerk of town meetings, and shall keep faithful minutes of the proceedings and a correct poll list containing the names of all persons voting at such meeting, and he shall enter at length every order or direction, and all rules and regulations made by the meeting; but if the town clerk be absent, then such person as shall be appointed by the board of inspectors for that purpose shall act as clerk of the meeting.

Persons chosen to supply vacancies to be sworn.

Sec. 24. Every person chosen at any town meeting to supply any vacancy in the board of inspectors of the election, or appointed to fill a vacancy in the office of clerk of such meeting, shall, before entering upon the duties of his office, take and subscribe the oath required of inspectors and clerks of general elections.

Order of business to be stated at opening of town meeting, &c.

When motion to reconsider, vote may be entertained.

Sec. 25. At the opening of every town meeting, the chairman thereof shall state the business to be transacted, and the order in which such business will be entertained, and no proposition to vote a tax except for the support of common schools, the relief of the poor, and for defraying the necessary town charges, shall be acted upon out of the order of business as stated by the chairman; and no proposition to reconsider any vote shall be entertained at any town meeting, unless such proposition to reconsider shall be made within one hour from the time such vote shall have been passed or the motion for such reconsideration shall be sustained by a number of votes equal to a majority of all the names entered on the poll list at such election, up to the time such motion shall be made.

Polls when to be opened and closed, and proclamation to be made.

Sec. 26. The polls of the election shall be opened between the hours of nine and ten o'clock in the forenoon and closed at five o'clock in the afternoon, and the inspectors shall cause proclamation to be made at each opening of the polls, and at any adjournment thereof, and proclamation in like manner, at least one hour before the final closing of the polls, specifying the hour at which the polls of the election will be closed.

Town officers to be chosen by ballot, except overseers

SEC. 27. All town officers shall be chosen by ballot, except overseers of highways, who may be chosen in such manner as the electors at any town meeting shall direct.

Names to be on one ballot, and the offices specified, and no more names to be inserted than officers to be elected

SEC. 28. In the election of officers to be chosen by ballot, the names of all the persons voted for shall be on one ballot, and the offices to which such persons are intended to be chosen shall be designated thereon; but no ballot shall contain a greater number of names, as designated to any office, than there are persons to be chosen at such election to fill such office; and such ballots shall be received and kept as is required at general elections.

Challenge and oath.

SEC. 29. If any person shall offer to vote at a town meeting, whose right of voting shall be challenged by any elector qualified to vote at such meeting, the inspectors shall declare to the person challenged the qualifications of an elector; and if such person shall state that he is duly qualified, and the challenge shall not be withdrawn, one of the inspectors shall tender to him the following oath: "You do solemnly swear (or affirm, as the case may be,) that you are twenty-one years of age, that you are a citizen of the United States, (or that you have declared your intention to become a citizen, conformably to the laws of the United States on the subject of naturalization,) that you have resided in this state one year, next preceding this election, and that you are now a resident of this town; that you have not made any bet or wager, or become directly or indirectly interested in any bet or wager depending upon the result of this election, and that you have not voted at this election." And no person whose vote shall have been received upon such challenge shall again be challenged upon any question arising at the same town meeting.

Person voting after challenged and sworn, not to be again challenged.

Powers and duties of chairman of town meeting

SEC. 30. The chairman of each town meeting shall regulate its proceedings and decide all questions of order arising at such meeting, and shall make public declaration of all votes passed; he shall possess authority to enforce obedience to his lawful requirements; and if any person at such meeting shall conduct himself in a disorderly manner, and after notice from the chairman shall persist therein, the chairman may order him to withdraw from the meeting, and, on his refusal, may order any constable or other persons to take him into custody until the meeting shall be adjourned.

Power of inspectors and chairman to preserve order, &c.

SEC. 31. In addition to the provisions of the preceding section, the inspectors or chairman shall have the same authority to preserve order, to enforce obedience, and to commit for disorderly conduct, as is possessed by the board of inspectors at a general election.

Motions to be determined by majority voting.

SEC. 32. All questions upon motions made at a town meeting shall be determined by a majority of the electors voting.

Canvass of Votes.

Canvass when and how made.

SEC. 33. At the close of every election, the votes given by ballot shall be publicly canvassed by the inspectors, at the place where the meeting was held, which canvass, when commenced, shall be continued without adjournment or intermission until the same shall be completed.

Proceedings to determine correct number of ballots.

SEC. 34. Before the ballots are opened they shall be counted and compared with the number of names of voters on the poll list, and if two or more ballots shall be found folded together, and the inspectors shall be satisfied from their appearance, and from a comparison of the number of votes given with the number of names on the poll list, that the ballots so folded together were given by the same person, they shall be rejected; and if the ballots shall be found to exceed in number the whole number of names on such poll list, they shall be placed in the box from which they were taken, and one of the inspectors shall publicly draw out and destroy, unopened, as many ballots as shall be equal to such excess; the number of ballots and the number of names on the poll list agreeing, or being made to agree, the board shall then proceed to canvass and estimate the votes.

Clerk to read names of persons voted for, the number of votes, and names of those elected.

Reading to be deemed notice to those voting.

Sec. 35. The canvass being completed, and the result ascertained and determined by the inspectors, the clerk shall publicly read to the meeting the names of the persons for whom votes for each office were given, and the number of votes so given to each person, and the names of the persons declared to be duly elected, by the inspectors, to each office respectively; and such reading shall be deemed sufficient notice to every person elected to any office at such meeting, of his election, whose name has been entered on the poll list as a voter.

Statement to be drawn up by inspectors, &c.

Sec. 36. The inspectors shall also draw up a statement in writing, setting forth in words at full length, the whole number of votes given for each office, the names of the persons for whom such votes were given, and the number of votes given to each person, and certify upon such statement their determination of the persons elected, which statement and certificate of determination shall be left with the town clerk and recorded in his office.

Persons receiving greatest number of votes to be elected.

When votes equal to be determined by lot.

Sec. 37. The persons having received the greatest number of votes given for any office at such election, shall be deemed and declared duly elected; and if two or more shall have received the greatest and an equal number of votes for the same office, the inspectors of the election shall determine the choice by lot, (which lots shall be drawn by the persons receiving the equal number of votes,) and shall declare and certify the same accordingly.

Of Town Officers.

Who eligible to town office.

Sec. 38. No person shall be eligible to any town office unless he shall be an elector of the town for which he shall be chosen.

Certain town officers to take and file oath of office within ten days.

Sec. 39. Every person elected or appointed to the office of supervisor, town clerk, assessor, treasurer, town superintendent of schools, sealer of weights and measures, or constable, within ten days after he shall be notified of his election or appointment, shall take and subscribe before the town clerk, or some other person authorized to administer oaths, an oath to support the constitution of the United States, and the constitution of this state, and faithfully to discharge the duties of his office, (naming the same,) to the best of his ability; such oath shall be administered without fee, and certified by the officer before whom it was taken, with the date of taking the same; and such person, before entering upon the duties of his office, shall cause said oath so certified to be filed within ten days in the office of the town clerk.

CHAPTER 12.

Clerk to notify person elected, if his name not on poll list.

Neglect to file bond deemed a refusal to serve.

SEC. 40. Within five days after the election of any officers at a town meeting, the town clerk shall transmit to each person elected, whose name shall not be found on the poll list of said election as a voter, a notice of his election; and if any person chosen or appointed to any town office, of whom an oath or bond is required shall neglect to file the same within the time prescribed by law, such neglect shall be deemed a refusal to serve in such office.

Penalty for entering upon office before oath or bond filed

SEC. 41. If any person elected to a town office of whom an oath or bond is required, shall enter upon the duties of such office before he shall have filed such oath or bond, he shall be fined in a sum not exceeding fifty dollars.

Person refusing or neglecting to serve liable to fine.

When not liable.

SEC. 42. If any person elected to any town office, unless unable from disease or other infirmity to discharge the duties of such office, shall refuse or neglect to serve therein, he shall be liable to a fine of ten dollars; but no person so elected, who shall have served in any town office for the term next preceding such election, shall be liable to such fine for refusing to serve, if he shall have given notice in writing of his refusal to the town clerk within ten days after having been notified of his election.

Town officers, except justices, to hold office one year.

SEC. 43. Every town officer elected at an annual meeting, except justices of the peace, shall hold his office for one year and until his successor is elected and qualified.

Officers elected to fill vacancies, how long to hold.

SEC. 44. Every town officer, elected at a special meeting to fill a vacancy, shall hold his office during the unexpired portion of the regular term of such office, and until his successor is elected and qualified.

Penalty for not delivering moneys, &c., to successor.

SEC. 45. Every town officer who shall, after the expiration of his office, neglect or refuse to deliver on demand to his successor in office, after such successor shall have been duly qualified according to law, all moneys, records, books, and papers, or other property, appertaining to such office, shall be liable to pay a fine not less than fifty nor more than two hundred dollars, to be recovered before any court having jurisdiction thereof.

Of Resignations and Vacancies.

Supervisors may accept resignations, &c.

When justice resigns clerk to give notice.

SEC. 46. The board of supervisors of any town for sufficient cause shown them, may accept the resignation of any town officer, addressed to them in writing; and whenever a resignation shall be accepted by the supervisors, they shall endorse thereon such acceptance, and cause the same to be filed in the office of the town clerk; and when a justice of the peace resigns his office, the clerk shall immediately give notice of such resignation to the clerk of the circuit court of the county.

When supervisors may make appointment of certain officers.

SEC. 47. Whenever there shall be a vacancy, or when the incumbent shall from any cause be unable to perform the duties of any office to which he may have been elected, except that of justice of the peace, and town treasurer, the town board of supervisors may make temporary appointments of suitable persons to discharge the duties of such offices, respectively; and such persons so appointed shall take and file the oath of office required by law, and shall discharge the duties thereof until the same is filled by election or until the disability is removed.

Sec. 48. If the treasurer of any town shall refuse to serve, or if his office shall become vacant, or if he shall be unable from sickness or any other cause to perform the duties of his office, the board of town supervisors shall forthwith appoint a treasurer for the remainder of such term of office; and the person so appointed shall take and file the oath of office, and shall give the like security, and be subject to the like duties and responsibilities, and have the same powers and compensation as the treasurer in whose place he was appointed; but such appointment shall not exonerate the former treasurer or his sureties from any liability incurred by him or them.

Shall appoint town treasurer in certain cases.

New Organization of Towns.

Sec. 49. When a new town shall be organized, if there be one or more justices of the peace residing therein, they shall be deemed justices thereof, and shall hold their offices according to their respective terms; and only so many justices shall be chosen as shall be necessary to make up the number of four in such town.

When new town organized, justices in same to continue in office, &c.

Sec. 50. The town clerk, within six days after the election of justices of the peace in any such town, shall give notice in writing to the justices elected, to meet at such time and place as shall be specified in the notice, for the purpose of determining by lot the terms of office of such justices; which notice shall be given not less than six, nor more than twelve days previous to the time appointed therein for such meeting.

Clerk to notify justices elected in new towns to meet and draw lots.

Sec. 51. At the time and place so appointed, the town clerk shall cause to be written on separate pieces of paper, as near alike as practicable, the numbers, one, two, or such and so many of each such numbers as shall correspond with the vacant terms of office to be supplied, and shall cause such papers to be folded up as nearly alike as practicable and deposited in a box; and the persons so elected justices shall severally draw one of said pieces of paper, if such persons shall be present and consent to such drawing, otherwise the lots shall be drawn by the inspectors; and the term of office of each such justice shall be determined by such drawing, and each shall hold his office for such number of years as shall correspond with the number by him so drawn.

Lots how to be drawn.

Sec. 52. If any person elected a justice of the peace shall neglect to attend at the time and place specified in such notice, the town clerk shall select some qualified elector of the town to draw for such justice, in the manner prescribed in the preceding section, and the number drawn by such elector shall be a lawful determination of the term of office of said justice.

If justice neglect to attend, clerk to select person to draw for him.

Sec. 53. The town clerk shall make duplicate certificates of such drawing and the result thereof, one of which certificates shall be filed and recorded in his office, and the other he shall transmit to the clerk of the circuit court of the county. If the county is not organized for judicial purposes the said certificates shall be filed with the clerk of the board of supervisors.

Clerk to make duplicate certificates of drawing, &c.

Sec. 54. Whenever any organized county shall not be divided into towns, such county shall, for the purposes of town government, until so divided be considered as one town, and may elect town officers, whose powers and duties shall be the same as town offi-

When county not divided into towns, to be considered as one town, &c.

CHAPTER 12. cers in other towns and each county may elect as many justices of the peace, as under the county system of government they were authorized to elect.

Of Supervisors.

Certain powers of supervisors.

SEC. 55. The supervisors of each town shall have charge of all such affairs of the town as are not by law made the duty of other town officers; and they shall have power to draw orders on the town treasurer, for the disbursement of such sums as may be necessary for the purpose of defraying the incidental expenses of the town, and for all moneys raised by the town to be disbursed for any other purpose, except moneys for the support of schools.

To be commissioners of highways and overseers of poor.

SEC. 56. They shall, by virtue of their office, be the commissioners of highways, and the overseers of the poor in their town.

Chairman to attend county board.

SEC. 57. The chairman of the supervisors of each town, shall attend the annual meeting of the board of supervisors of the county, and every adjourned and special meeting of such board; and if, from sickness or other cause, such chairman shall be unable to attend any such meeting of the board, either of the other supervisors of the town may attend such meeting, and act as a member of such board; and if they disagree as to which of them shall act as such chairman, then they shall decide the same by lot.

If unable to attend one of the other supervisors may.

To prosecute suits for town and sue for penalties, &c

SEC 58. The supervisors of each town shall, by their name of office, prosecute, for the benefit of the town, all suits upon bonds and sureties given to them or their predecessors in office; and shall also sue for and collect all penalties and forfeitures imposed in this chapter, in respect to which no other provision is made, which shall be incurred by any officer or inhabitant within the town; and they shall have power in like manner, to prosecute for any trespass committed on any public building, enclosure, or property belonging to the town; and shall pay all moneys collected under this section to the town treasurer.

Two of supervisors to constitute a quorum

SEC. 59. Any two of the supervisors may in all cases constitute a quorum for the performance of any duties required by law of the town supervisors, except when otherwise provided.

Of Town Clerk.

Duties of town clerk.

SEC. 60. The town clerk of each town shall have the custody of the records, books and papers of the town, when no other provision is made by law; and he shall duly file and safely keep all certificates of oaths and other papers, required by law to be filed in his office, and record such as are by law required to be recorded therein.

Ib.

SEC. 61. He shall transcribe in the book of records of his town, minutes of the proceedings of every town meeting held therein, and he shall enter in such book every order or direction, and all rules and regulations, made by any such town meeting; he shall also file and preserve all accounts audited by the town board, or allowed at a town meeting, and enter a statement thereof in such book of records.

To transmit names of constables to clerk of court.

SEC. 62. Every town clerk, immediately after the qualifying of any constable chosen or appointed in his town, shall transmit to the clerk of the circuit court of the county, the name of such constable.

To transmit notice of election of justices to clerk of court.

SEC. 63. Each town clerk shall, immediately after the election of any justices of the peace in his town, transmit a written notice thereof to the clerk of the circuit court of the county, stating therein the names of the persons elected, and the terms for which they were respectively elected; and if one or more of them has been elected to fill a vacancy, he shall state in such notice who was the last incumbent of the office.

Town clerk may appoint deputy, and his powers and duties.

SEC. 64. Each town clerk may, after entering upon the duties of his office, appoint a deputy, who shall take the oath of office, and file the same with the clerk; and in case of the absence, sickness, or other disability of the clerk, such deputy shall perform the duties of such clerk, and receive the same compensation that the clerk would have been entitled to receive.

Copies of papers and records in his office to be evidence.

SEC. 65. Copies of all papers, duly filed in the office of the town clerk, and transcripts from the town book of records certified by him, shall be evidence in all courts, in like manner as if the originals were produced.

To post up copies of by-laws, and make entry of same.

SEC. 66. It shall be the duty of the town clerk to post up, in three of the most public places in his town, copies of all by-laws made by such town, and he shall make an entry in the town records, of the time when, and the places where, such by-laws were posted up.

To execute conveyances of land belonging to town.

SEC. 67. The town clerk shall execute, in his name of office, and under his hand and seal, all conveyances of land belonging to the town, whenever the same shall be sold in pursuance of an order of the town.

Of Town Board.

Town board to consist of supervisors

SEC. 68. The supervisors of each town shall constitute a town board for the purpose of auditing all accounts payable by such town; and if from any cause there shall not be three supervisors present, to constitute said board, the chairman, or in his absence, either of the other supervisors, may notify any one, or so many of the justices of the peace of the town, as together with the supervisor or supervisors present, shall make a board of three; and the board so constituted shall have authority to act as the town board.

If part absent, justices may act.

When to meet, and for what purpose.

SEC. 69. The town board shall meet annually on the Tuesday next preceding the annual town meeting, to be held in such town, for the purpose of auditing and settling all charges against the town, and they shall state on each account the amount allowed by them; but no allowance shall be made for any account which does not specifically state each item of the same, and the nature thereof.

Not to allow accounts unless specific.

To audit annually accounts of treasurer and superintendent.

SEC 70. The said board shall also, at their annual meeting in each year, examine and audit the accounts of the town treasurer, and the town superintendent of schools, for all moneys received and disbursed by them as such officers; and they shall also audit the accounts of all other town officers who are authorized by law to receive or disburse any money of the town, by virtue of their office.

To make annual report.

Sec. 71. Such board shall draw up a report, stating in detail the items of account audited and allowed, the nature of each account, and the name of the person to whom such account was allowed; such report shall be accompanied by a statement of the fiscal concerns of the town, and an estimate of the sum necessary for the current expenses thereof, the support of the poor, and other incidental expenses for the then ensuing year.

Same to be read at town meeting, and may be referred.

Sec. 72. Such report shall be produced, and publicly read by the town clerk, at the next ensuing town meeting, and the whole, or any portion of such report, may be referred by the order of such meeting to a committee, whose duty it shall be to examine the same and report thereon to such meeting.

Town orders for accounts allowed, how issued and paid.

Receivable for town taxes.

Sec. 73. The amount of any account audited and allowed by the town board, and the amount of any account voted to be allowed at any town meeting, shall be paid by the town treasurer, on the order of the board, signed by the chairman and countersigned by the clerk; and all orders issued to any person or persons, by the town board, for any sums due from such town, shall be receivable in payment of town taxes in said town.

Town clerk to be clerk of board, and his duties as such.

Sec. 74. The town clerk shall be the clerk of the town board, and shall keep a true record of all their proceedings in his office; he shall file in his office all accounts audited by the town board, and preserve the same for the inspection of any of the inhabitants of the town.

Of Treasurer.

Duties of town treasurer.

Sec. 75 The town treasurer shall receive and take charge of all moneys belonging to the town, or which are by law required to be paid into the town treasury, and shall pay over and account for the same, upon the order of such town, or the officers thereof duly authorized in that behalf, made pursuant to law, and shall perform all such other duties as may be required of him by law.

To execute bond to be approved by chairman.

Sec. 76. Each town treasurer, within the time limited for filing his oath of office, and before entering upon the duties of his office, shall execute a bond to the supervisors of the town in such sum, and with such sureties, as the chairman of town supervisors shall require and approve, conditioned for the faithful discharge of the duties of his office, and that he will faithfully and truly account for and pay over according to law, all moneys which shall come into his hands as such treasurer; and the said supervisor shall endorse his approval thereon; and file the same in the office of the town clerk.

To keep account of moneys, and exhibit same for adjustment.

To deliver to successor books, &c.

Sec. 77. Every town treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same is disbursed, in a book to be provided at the expense of the town for that purpose, and exhibit such account, together with his vouchers, to the town board at its annual meeting for adjustment; and he shall deliver all books and property belonging to his office, and the balance of all moneys in his hands as such treasurer, to his successor in office, on demand, after such successor shall have qualified according to law.

To be town collector.

Sec. 78. The town treasurer of each town, shall, by virtue of his office, be the collector of taxes for his town, and shall perform the duties of such office as prescribed by law.

Of Constables.

Constables to give security in writing.

Sec. 79. Every person elected or appointed to the office of constable, before he enters npon the duties of his office, and within the time prescribed by law for filing his oath of office, shall execute an instrument in writing with two or more sufficient sureties to be approved by the town clerk, which writing shall in substance be in the following form:

"A. B., chosen (or appointed) a constable in the town of , and C. D. and E. F. as his sureties, do hereby jointly and severally agree to pay, to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay, for or on account of any moneys which may come into his hands by virtue of his office, or for the neglect of any official duty.

Dated the day of 18 .

Executed in presence of } A. B.
L. M., town clerk, } C. D.
E. F."

Town clerk to approve and file security.

Sec. 80. The town clerk shall endorse on such instrument his approval of the sureties therein named, and shall file the same in his office, and a copy of such instrument, certified by the town clerk, shall be presumptive evidence in all courts of the execution thereof by such constable and his sureties; and all actions against a constable or his sureties, upon any such instrument, shall be prosecuted within two years after the expiration of the year for which the constable named therein shall have been elected.

Suits thereon to be prosecuted within two years.

Constables to serve process.

Sec. 81. Any constable may serve any writ, process, or order, lawfully directed to him, within his county.

To be ministerial officers of justices and to attend circuit courts.

Sec. 82. Constables shall be ministerial officers of justices of the peace, and shall attend upon the sessions of the circuit courts in their respective counties when notified for that purpose by the sheriff.

Of Justices of the Peace.

How long justices to hold their office.

Sec 83. Justices of the peace, after the first election under the provisions of this chapter, shall severally hold their offices for two years from and after the first Monday in May next succeeding their election, except when elected to fill a vacancy in office occurring before the expiration of the legal term of two years, and when elected to fill a vacancy they shall hold during the unexpired portion of such term.

Four justices to be elected at first town meeting.

Sec. 84. At the first town meeting held under the provisions of this chapter, there shall be elected in each town four justices of the peace, two of whom shall hold their offices for the term of two years, and two of whom shall hold their offices for the term of one year; and the justices so elected shall meet at the office of the town clerk on the second Monday next succeeding their election, between

When and where to determine their terms by lot.

the hours of two and four o'clock on that day, and determine by lot their respective terms of office.

Proceedings in drawing lots.

SEC. 85. At such time and place, the town clerk shall prepare four separate pieces of paper as near alike as practicable, on two of which shall be written the number "one," and on two of which shall be written the number "two," and he shall cause them to be folded up alike, as near as practicable, and deposited in a box; and the persons elected justices shall severally draw one of the said pieces of paper, and the term of office of each such justice shall be determined by such drawing, and each shall hold his office for the number of years corresponding with the number by him so drawn.

If justice neglect to attend, town clerk to appoint an elector to draw for him.

SEC. 86. If any person elected a justice of the peace shall neglect to attend at the time and place specified in the preceding sections, the town clerk shall select some qualified elector of the town to draw for said justice in the manner prescribed in the preceding section, and the number drawn by such elector shall be a lawful determination of the term of office of said justice.

Clerk to make duplicate certificates, and transmit one to clerk of court.

SEC. 87. The town clerk shall make duplicate certificates of such drawing, and the result thereof, one of which certificates shall be filed and recorded in his office, and the other he shall transmit to the clerk of the circuit court of the county.

When justices to take oath of office.

SEC. 88. Each justice elected to fill a vacancy shall, within ten days after notice of his election, and each justice elected at the first election, under the provisions of this chapter, and each justice thereafter elected for the full term of two years, shall, on or before the first Monday in May next succeeding his election, take and subscribe his oath of office, before some officer authorized to administer oaths, and cause the same to be filed with the clerk of the circuit court of the county.

To give security in writing.

SEC. 89. Every justice of the peace, before he enters upon the duties of his office, and within the time limited by law for filing his oath of office, shall execute an instrument in writing, with two or more sufficient sureties, to be approved by any two of the supervisors, which writing in substance shall be in the following form:

"A. B., chosen a justice of the peace in the town of   , and C. D. and E. F., as his sureties, do hereby jointly and severally agree to pay, on demand, to each and every person who may be entitled thereto, all such sums of money as the said justice may become liable to pay, on account of any moneys which may come into his hands by virtue of his office.

Dated the   day of   18 .

Executed in presence of } A. B.
L. M., supervisor. } C. D.
E. F."

To be approved and filed.

SEC. 90. The approval of the sureties therein named by the two supervisors aforesaid, shall be endorsed upon such instrument, and the said justice shall cause the same to be filed in the office of the clerk of the circuit court of the county; and a copy of such instrument, duly certified by such clerk, shall be presumptive evidence of the contents and execution thereof.

Copy to be evidence.

In counties not organized for judicial purposes,

SEC. 91. All certificates and other papers required by this chapter to be filed in the office of the clerk of the circuit court, shall in those counties not organized for judicial purposes, be filed in the office of the clerk of the board of supervisors, whose certificate, with the county seal attached, shall be presumptive evidence in all courts of record.

Certain papers to be filed with clerk of the board of supervisors.

SEC. 92. Whenever, at any town meeting, there shall be a vacancy to be supplied in the office of justice of the peace, and at such election justices of the peace are to be elected for the full term, it shall be necessary to distinguish on the ballots the persons voted for to supply such vacancy.

When to distinguish on ballots persons voted for as justices.

Compensation of Town Officers.

SEC. 93. Supervisors, assessors, clerks of the polls, and superintendents of schools, shall be entitled to a compensation for each day actually and necessarily devoted by them to the service of the town, and in the discharge of any of the duties of their respective offices required of them by law, of one dollar a day each, and at the same rate for parts of a day; and no town officer shall be entitled to pay for acting in more than one capacity of office at the same time, unless the town shall have fixed a different compensation at the annual town meeting.

Compensation of certain town officers.

Not to receive pay for acting in more than one capacity.

SEC. 94. The town clerk shall be entitled, for the services required of him by law, to such compensation as the town board shall deem just and proper, unless such compensation shalll have been established by a vote of the town at the annual town meeting thereof.

Compensation of town clerk.

CHAPTER 13.

OF PENALTIES FOR VIOLATING ELECTION LAWS.

SECTION 1. If any elector shall be guilty of wilful and corrupt false swearing or affirming, in taking any oath or affirmation prescribed by any law of this state relative to general, special, town, school district or charter elections, such person shall be adjudged guilty of wilful and corrupt perjury; and every person who shall wilfully and corruptly procure any person to swear or affirm falsely as aforesaid, shall be adjudged guilty of subornation of perjury; and all such persons shall, upon conviction thereof, suffer the punishment directed by law in cases of wilful and corrupt perjury.

False swearing at elections to be perjury.

Procuring one to swear false to be subornation of perjury.

SEC. 2. If any officer, messenger, or other person, on whom any duty is enjoined by law relative to general, special, town, school district, or charter elections, or to the return or canvassing of votes given at any such elections, shall be guilty of any wilful neglect of such duty, or of any corrupt conduct in the execution of the same, he shall on conviction thereof be deemed guilty of a misdemeanor, and shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Persons on whom any duty is enjoined relative to elections to be punished for neglect of duty, &c.

Persons convicted of treason, &c., and those engaged in a duel, to be punished for voting.

Sec. 3. If any person convicted of treason, felony, or bribery, unless he shall have been restored to civil rights, or if any person being an inhabitant of this state, who shall hereafter be engaged, directly or indirectly, in a duel, either as principal or accessory, shall vote at any election specified in the preceding section, every such person shall be deemed guilty of a misdemeanor, and on conviction, shall be imprisoned for a term not exceeding six months.

Penalty on persons attempting to bribe, or hinder or disturb electors in voting

Sec. 4. If any person shall, by bribery, menace, or any other corrupt means or device whatever, directly or indirectly attempt to influence any elector of this state in giving his vote or ballot, or deter him from giving the same, or disturb or hinder him in the free exercise of the right of suffrage, at any election held pursuant to the provisions of law, such person shall, on conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Penalty on officer for calling out militia on election day, &c.

Sec. 5. If any officer or other person shall call out, or order any of the militia of this state to appear, or exercise on any day during any election to be held pursuant to law, in any town or ward where such election is held, or within two days previous thereto, except in cases of invasion or insurrection, he shall forfeit a sum of not less than fifty nor more than five hundred dollars for every such offence.

Penalty on person for changing vote of elector.

Sec. 6. If any person shall fraudulently or deceitfully change a vote of any elector, by which such elector shall be prevented from voting for such candidate as he intended, every such person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not exceeding two hundred and fifty dollars, or by imprisonment not exceeding six months.

Penalty for voting when not entitled, or where voter does not reside, and for voting twice.

Sec. 7. Every person not a qualified voter, who shall at any election wilfully give in a vote for any officer then to be chosen, and every qualified voter who, at such election, shall vote in any town, ward or school district in which he does not reside, or who shall vote more than once at the same election, either in the same or any other town, ward, or school district; or who shall wilfully give in two or more votes folded together, shall on conviction thereof be adjudged guilty of a misdemeanor, and shall be punished by fine of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment not exceeding three months.

Penalty for procuring, aiding or counselling person to vote when not entitled.

Sec. 8. Every person who shall procure, aid, or counsel any person not duly qualified to vote at any election, or who is not qualified to vote at the place where the vote of such person is given or offered, to give or offer his vote at any such election or place, knowing that such person is not qualified to vote, and every person who shall procure, aid, or counsel any person to go or come into any town, ward or school district, for the purpose of voting therein at any election, knowing that such person is not duly qualified to vote in such town, ward or school district, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine or imprisonment, the fine not to exceed one hundred dollars, nor the imprisonment three months.

Sec. 9. Any person not authorized by law, who shall, during the progress of any election in this state, or after the closing of the polls and before the ballots are counted and the result ascertained, break open or violate the seals or locks of any ballot box in which ballots have been deposited at such election, or who shall obtain undue possession of such ballot box containing such ballots, and conceal, withhold, or destroy the same, or who shall fraudulently or forcibly add to or diminish the number of ballots legally deposited, and all persons aiding or abeting therein, shall be adjudged guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment not exceeding three years, or by fine not exceeding one thousand dollars.

Penalty on persons for breaking seals or locks of ballot box, and foi concealing, destroying, &c., ballots.

Sec. 10. It shall be the duty of every inspector of elections, and of every sheriff, constable, and justice of the peace, knowing or having reason to believe that an offence punishable under the provisions of this chapter has been committed, to cause the offender forthwith to be arrested, and to give information thereof to the district attorney of the county where the offence is committed, without delay, and such attorney shall adopt effectual measures for the conviction of all persons who shall violate the provisions of this chapter.

Duty of inspectors and other officers knowing the provisions of this chapter to have been violated.

Duty of district attorney.

Sec. 11. It shall be the duty of the clerk, or one of the inspectors, at every general or special election, to read this chapter in an audible voice to the electors present at the time of opening the polls.

This chapter to be read at every election.

Sec. 12. It shall be the duty of all courts in this state, having cognizance thereof, to charge the grand jury at each term to make presentment of all offences committed within their respective counties against any of the provisions of this chapter.

Courts to charge grand jury relative thereto.

CHAPTER 14.

OF FENCES AND FENCE VIEWERS; OF POUNDS AND THE IMPOUNDING OF CATTLE.

Section 1. Of fences.
20. Of fence viewers.
23. Of pounds and impounding cattle.

Of Fences.

Section 1. All fences four and a half feet high, and in good repair, consisting of rails, timber, boards, or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches and hedges, or other things which shall be considered equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same may be, shall be deemed legal and sufficient fences.

What to be deemed a legal fence.

Sec. 2. The respective occupants of lands enclosed with fences shall keep up and maintain partition fences between their own and

Partition fences.

the next adjoining enclosures, in equal shares, so long as both parties continue to improve the same.

Neglect to maintain partition fence.

Sec. 3. In case any party shall neglect to repair or rebuild any partition fence, which of right he ought to maintain, the aggrieved party may complain to two or more fence viewers of the town, who after due notice to each party, shall proceed to examine the same; and if they shall determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they shall judge reasonable; and if such fence shall not be repaired, or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same.

Double value of repairs may be recovered of delinquent.

Sec. 4. When any deficient fence, built up or repaired by any complainant, as provided in the preceding section, shall be adjudged sufficient by two or more of the fence viewers, and the value of such repairing or building up, together with their fees, shall be ascertained by a certificate under their hands, the complainant shall have a right to demand, either of the occupant or owner of the land where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the sum so due, for one month after demand thereof made, the complainant may recover the same, with interest at one per cent a month, in an action for money paid, laid out and expended.

Fence viewers to determine controversies relative to partition fences.

Sec. 5. When any controversy shall arise about the rights of the respective occupants, in partition fences, or their obligation to maintain the same, either party may apply to two or more fence viewers of the town where the lands lie, who, after due notice to each party, may in writing assign to each his share thereof, and direct the time within which each party shall erect or repair his share of the fence in the manner before provided; which assignment, being recorded in the town clerk's office, shall be binding upon the parties, and upon all the succeeding occupants of the lands; and they shall be obliged always thereafter to maintain their respective portions of said fence.

Other party may erect fence in case of neglect, and recover double value.

Sec. 6. In case any party shall refuse or neglect to erect and maintain the part of any fence assigned to him by the fence viewers, the same may be erected and maintained by the aggrieved party, in the manner before provided; and he shall be entitled to double the value thereof, ascertained in the manner aforesaid, and to be recovered in like manner.

Divisions of fences recorded, &c., to be valid.

Sec. 7. All divisions of fence made by fence viewers, according to the provisions of this chapter, or which shall be made by owners of adjoining lands, in writing, witnessed by two witnesses, signed, sealed and acknowledged by the parties making the same, being recorded in the town clerk's office, shall be good and valid against the parties thereto, their heirs and assigns.

When either party erects more than his share, the other party to pay for same.

Sec. 8. When, in any controversy that may arise between occupants of adjoining lands, as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for so much as may be assigned to him to repair or maintain, the value of which shall be ascertained and recorded in the manner provided in this chapter.

Partition fences to be kept in good repair.

Sec. 9. All partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides shall otherwise mutually agree.

How partition fences made when lands divided by river, pond, &c.

Sec. 10. When lands of different persons, which are required to be fenced, are bounded upon or divided by any river, brook, pond or creek, which of itself, in the judgment of the fence-viewers, is not a sufficient fence, and it is in their opinion impracticable, without unreasonable expense, for the partition fence to be made in such waters, in the place where the true boundary line is; if in such case the occupant of the land on one side, shall refuse or neglect to join with the occupant of the land on the other side, in making a partition fence on the one side or the other, or if such persons shall disagree respecting the same, then two or more fence-viewers of the town in which such lands lie, on application to them made, shall forthwith proceed to view such river, brook, pond or creek.

How fence viewers to proceed and decide in such cases.

Sec. 11. If such fence viewers shall determine such river, brook, pond or creek, in the preceding section mentioned, not to answer the purpose of a sufficient fence, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line, they shall, after giving notice to the parties, determine how, or on which side thereof, the fence shall be set up and maintained, or whether partly on one side and partly on the other side, as to them shall appear just, and shall reduce such determination to writing, and sign the same; and if either party shall refuse or neglect to make or maintain his part of the fence, according to the determination of the fence viewers, the same may be made and maintained by the other party, as before provided in this chapter, and the delinquent party shall be subject to the same charges and costs, to be recovered in like manner.

If either party neglect to build fence the other may.

Division and assignment of partition fence between persons occupying lands in common.

Sec. 12. When any lands, belonging to different persons in severalty, shall have been occupied in common, without a partition fence between them, and one of the occupants shall be desirous to occupy his part in severalty, and the other occupant shall refuse or neglect, on demand, to divide with him the line where the fence ought to be built, or to build a sufficient fence on his part of the line, when divided, the party desiring it may have the same divided and assigned by two or more fence viewers of the same town, in the manner provided in this chapter.

If party neglect to make his part of fence, the other party may make same and recover double the expense.

Sec. 13. Upon the division and assignment, as provided in the preceding section, the fence viewers may, in writing under their hands, assign a reasonable time for making the fence, having regard to the season of the year, and if either party shall not make his part of the fence, within the time so assigned, the other party may, after having completed his own part of the fence, make the part of the other, and recover therefor double the ascertained expense thereof, together with the fees of the fence viewers, in the manner provided in this chapter.

When one party wishes to open his enclosure, the other party may purchase fence.

Sec. 14. When one party shall cease to improve his land, or shall open his enclosure, he shall not take away any part of the partition fence belonging to him, and adjoining the next enclosure if the owner or occupant of such adjoining enclosure will, within two months after the same shall be ascertained, pay therefor such sum as two or more fence viewers shall, in writing under their hands, determine to be the value of such partition fence belonging to such party.

The owner of uninclosed land enclosing same to pay for half of partition fence, &c

SEC. 15. When any unenclosed land shall be afterwards inclosed, the owner or occupant thereof shall pay for one-half of each partition fence, standing upon the line between his land and the enclosure of any other owner or occupant, and the value thereof shall be ascertained by two or more fence viewers of the town, in writing under their hands, in case the parties do not agree; and if such owner or occupant shall neglect or refuse, for sixty days after the value has been so ascertained and demand made, to pay for one-half of such partition fence, the proprietor of such fence may maintain an action in the form aforesaid, for such value, and the costs of ascertaining the same.

On boundary line between towns, fence viewer from each town to act.

SEC. 16. In all cases where the line upon which a partition fence is to be made, or to be divided, is the boundary line between towns, or partly in one town and partly in another, a fence viewer shall be taken from each town.

Partition fences running into water.

SEC. 17. Where a partition fence running into the water is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and in case either party shall refuse or neglect to make or maintain the share belonging to him, similar proceedings shall be had, as in case of other fences, and with the like effect.

Owners, their heirs and assigns to support division fences.

SEC. 18. In all cases, where the line upon which a partition fence to be built between unimproved lands, has been divided by the fence viewers, or by agreement in writing between the owners of such lands, recorded in the office of the clerk of the town, or of one of the towns where such lands lie, the several owners thereof, and their heirs and assigns forever, shall erect and support said fences, agreeably to such division.

Owner may remove partition fence on six months notice.

SEC. 19. If any person shall determine not to improve any part of his lands adjoining any partition fence that may have been divided according to the provisions of this chapter, and shall give six months' notice of such determination to all the adjoining occupants of lands, he shall not be required to keep up or support any part of such fence during the time his lands shall lie open and unimproved; and he may thereafter remove his portion thereof if the owner or occupant of the adjoining enclosure will not pay therefor as provided in the fourteenth section of this chapter.

Fence Viewers.

Overseers of highways to be fence viewers.

SEC. 20. The overseers of highways in the several towns in this state shall be fence viewers in their respective towns.

Penalty for neglect of fence viewer to act.

SEC. 21. Any fence viewer who shall, when requested, unreasonably neglect to view any fence, or to perform any other duty required of him in this chapter, shall forfeit the sum of five dollars, and shall also be liable to the party injured for all damages consequent upon such neglect.

Fees of fence viewers, and how recovered.

SEC. 22. Each fence viewer shall be paid by the person employing him, at the rate of one dollar a day for the time he shall be so employed; and if such person shall neglect to pay the same within thirty days after the service shall have been performed, each fence viewer having performed any such service may recover, in an action of assumpsit, double the amount of such fees.

Pounds and Impounding Cattle.

Towns may provide and maintain pounds.

SEC. 23. Each town may, at its own expense, and in such places therein as the electors shall direct, provide and maintain one or more sufficient pounds, in which swine, sheep, horses, asses, mules, goats, and neat cattle may be restrained and kept from going at large contrary to law, or to any by-law of such town.

Penalty for injuring pound.

SEC. 24. If any person shall wilfully injure any pound maintained by any town, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding ninety days, at the discretion of the court.

TITLE V.

CHAPTER 15.

OF THE ASSESSMENT AND COLLECTION OF TAXES.

SECTION 1. Of the property to be taxed.
6. Where and to whom property shall be assessed.
16. Of the duties of assessors.
37. Of the equalization of the assessments, and manner of assessing taxes.
55. Of the collection and return of taxes.
85. Of the sale of lands for unpaid taxes, and the conveyance and redemption thereof.
116. Miscellaneous provisions.

Property to be Taxed.

What property liable to taxation.

SECTION 1. All property, real and personal, within this state, not expressly exempted therefrom, shall be subject to taxation in the manner provided by law.

Definition of real property, &c.

SEC. 2. Real property shall, for the purposes of taxation, be construed to include the land itself, and all buildings, fixtures, and other improvements thereon, and all mines, minerals, quarries, and fossils, in and under the same; and the terms "land" and "real estate," when used in this chapter, shall be construed as having the same meaning as the term "real property."

Definition of personal property, &c.

SEC. 3. The terms "personal property" and "personal estate," as used in this chapter, shall have the same meaning, and shall, for the purposes of taxation, be construed to include all goods and chattels, moneys and effects, all boats and vessels, whether at home or abroad, and all capital invested therein, all debts due, or to become due, from solvent debtors, whether on account, contract, note, mortgage, or otherwise, all public stocks, and stocks or shares in all incorporated companies; and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

What property exempt from taxation.

SEC. 4. The following property shall be exempt from taxation:

1. All property, real and personal, of the United States and of this state.

2. All public or corporate property of the several counties, cities, villages, towns and school districts in this state, used or intended for corporate purposes, except lands bid off for counties on tax sales.

3. All personal property exempt by law from execution, not exceeding in value two hundred dollars.

4. The personal property of all literary, benevolent, charitable and scientific institutions incorporated within this state, and such real estate belonging to such institutions as shall be actually occupied by them for the purposes for which they were incorporated.

5. All houses of public worship, and the lots on which they are situate, and the pews or slips and furniture therein, every parsonage, and all burial grounds, tombs and rights of burial; but any part of any building, being a house of public worship, which shall be kept or used as a store or shop, or for any other purpose except for public worship or for schools, shall be taxed upon the cash valuation thereof, the same as personal property, to the owner or occupant, or to both; and the taxes thereon shall be collected in the same manner as taxes on personal estate.

6. All public libraries, and the real and personal property belonging to, or connected with the same.

7. The property of all Indians who are not citizens, except lands held by them by purchase.

8. The personal property of persons who, by reason of infirmity, age and poverty, may in the opinion of the assessors be unable to contribute towards the public charges.

Sec. 5. Lands contracted to be sold by the state and not conveyed, shall be assessed to the person holding the contract or certificate of purchase for the same, or to the occupant; but such lands shall be assessed as personal property, and not as real estate, and the tax thereon shall be collected in the manner prescribed for the collection of taxes upon personal property, but the lands shall in no case be returned or sold for the non-payment of taxes, and the state shall in no case convey such lands until all the taxes upon the same shall be paid.

Lands contracted to be sold by state, to be taxed as personal property.

Not to be conveyed until taxes paid.

Where and to whom Property shall be Assessed.

Sec. 6. All lands shall be assessed in the town or ward in which the same shall lie; and every person shall be assessed in the town or ward where he resides when the assessment is made, for all lands then owned by him within such town or ward; but land owned by one person and occupied by another may be assessed in the name of the owner or occupant.

Where lands to be assessed.

When occupied may be assessed to owner or occupant.

Sec. 7. Unoccupied lands, if the owner is unknown, may be assessed as such, without inserting the name of any person.

Unoccupied lands how assessed.

Sec. 8. The real estate of incorporated companies liable to taxation, shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals; and so much of any bridge, turnpike, plank road or railroad, owned by any such company, together with all buildings and fixtures belonging thereto, as shall be situate within any town, city, or village, shall be liable to taxation in such town, city, or village, as real estate, and may be returned and sold as real property; and such portion of the capital of any such company as shall be thus taxed, shall not be liable to be taxed as personal property.

Real estate of corporations where to be assessed.

Roads, bridges, &c., of corporations, where to be taxed and how sold.

Capital so taxed not liable as personal property.

Sec. 9. The undivided real estate of any deceased person, may be assessed to the heirs or devisees of such person, unless occupied by some other person, to whom it may be assessed, without designating them by name, until they shall have given notice to the assessor of the division of the estate, and the names of the several heirs and devisees; and each heir and devisee shall be liable for the whole of such tax, and shall have a right to recover

Undivided real estate of deceased persons to be assessed to heirs or devisees without name, &c.

of the other heirs and devisees their respective proportions thereof when paid by him.

Where persons to be taxed for personal estate

SEC. 10. Every person, except as provided in the succeeding section, shall be assessed in the town or ward where he resides when the assessment is made, for all taxable personal estate, owned by him, including all such personal estate in his possession, or under his control, as trustee, guardian, executor, or administrator; and where there are two or more persons jointly in possession or having the control of any such property in trust, the same may be assessed to either or all such persons, but it shall be assessed in the town or ward where the same shall be, if either of such persons reside in such town or ward.

How and where assessed to trustees, &c.

Goods, &c., kept for sale, and stock and capital employed in arts and manufactures, to be taxed where same may be.

SEC. 11. All goods, wares, and merchandise kept for sale in this state, all stock employed in any of the mechanic arts, and all capital and machinery employed in any branch of manufactures or other business within this state, owned by a corporation out of this state, or by any person or persons, whether residing in or out of the state, shall be taxable in the town or ward where the same may be, either to the owner thereof, or to the person who shall have charge of or be in possession of the same

Partners may be jointly or severally taxed.

SEC. 12. Partners in mercantile or other business, may be jointly taxed in their partnership name, or severally taxed on their individual shares, for all the personal property employed in such business; and in case they are jointly taxed, each partner shall be liable for the whole tax.

Where stock and personal estate of corporations to be taxed

SEC. 13. All the stock and personal estate of every incorporated company liable to taxation, unless otherwise provided, shall be assessed in the name of the company, in the town or ward where the principal office or place for transacting the financial concerns of the company shall be; or if such company have no such office, or place for transacting financial business, then in the town or ward where its operations shall be carried on; and in collecting any tax on such stock or personal estate, the personal property of any such company may be seized and sold the same as that of individuals; and in case no such property belonging to the company can be found sufficient to satisfy the tax and legal charges, then the personal property of any member thereof may be taken and sold to pay the same.

Personal property of company or any member may be sold to pay tax

When owner of stock not to be taxed for same.

SEC. 14. The owner or holder of stock in any incorporated company, which is taxed on its capital, shall not be taxed as an individual for such stock.

Personal property mortgaged, to whom to be assessed.

SEC. 15. When personal property is mortgaged, or pledged, it shall, for the purpose of taxation, be deemed the property of the person who has the possession.

Duties of Assessors.

When assessor to make assessment roll and appraisal

SEC. 16. Between the first day of June and the first day of July in each year, the assessor in each town or ward shall ascertain by diligent enquiry the names of all the taxable persons in his town or ward, and also all their taxable personal property, and all taxable real estate therein, on the first day of June of such year, and shall make out an assessment roll of all such taxable property, and appraise the same as hereinafter specified.

What he shall insert in assessment roll.

SEC. 17. He shall set down in the assessment roll, in separate columns, and according to the best information he can obtain:

1. The names of all the taxable persons of the town or ward:
2. A description of each tract or parcel of land to be taxed, specifying under appropriate heads, the township, range, and section, in which the land lies; or if divided into lots and blocks, then the number of the lot and block:
3. The number of acres and parts of an acre, as near as the same can be ascertained, unless the land is divided into lots and blocks:
4. The full cash value of each parcel of land taxed:
5. The full cash value of all the taxable personal property owned by or to be taxed to such person, as provided by law:
6. The total valuation of all property taxed, real and personal.

City, village, or town in which lots are situate, to be specified.

SEC. 18. When lots situate in any city or village, or in any town a plat of which shall have been recorded, are assessed, the city, village, or town, in which the same are situate, shall be specified in the assessment roll.

When person assessed as trustee, &c, how assessment to be entered.

SEC. 19. When a person is assessed as trustee, guardian, executor or administrator, a designation of his representative character shall be added to his name, and such assessment shall be entered on a separate line from his individual assessment; and he shall be assessed for the real estate held by him in such representative character, at the full value thereof, and for all the personal property so held by him, in such representative character.

When boundaries to be given.

SEC. 20. If the land assessed be less, or other than a subdivision according to the United States survey, unless the same is divided into lots or blocks so that it can thereby be definitely described, it shall be described by giving the boundaries thereof, or in such other manner as to make the description certain.

Lands may be described by letters, abbreviations and figures.

SEC. 21. It shall be sufficient to describe lands in all proceedings relative to assessing, advertising, or selling the same for taxes, by initial letters, abbreviations, and figures, to designate the township, range, section, or parts of a section, and also the number of the lots and blocks.

How unoccupied land of unknown persons to be described and set down.

SEC. 22. Unoccupied lands liable to taxation, when the name of the owner is unknown, shall be described, and the value thereof set down in the assessment roll, in a part thereof separate from the other assessments, in the same manner that lands of residents are required to be described and the value thereof designated.

Assessment roll how made out.

SEC. 23. The assessment roll shall be made out in tabular form, in separate columns with appropriate heads, after the manner specified below, with such additional columns as may be deemed necessary, varying the same as circumstances may require, but as nearly as convenient in the following form:

ASSESSMENT ROLL

For the Town of , in the County of , and State of Wisconsin, for the year 18 ; containing all the taxable property, real and personal, in said town.

Names of Persons Taxed.	**Description of Lands.**	Section.	Township.	Range, (E. or W.)	No. of acres.	Valuation of real estate.	Valuation of personal property.	Total valuation of all property.	Amount of tax.	**Remarks.**
						$ cts.	$ cts.	$ cts.	$ cts	
A. B.,	W. ½ of N. E. ¼,	34	3	19	80	560 00	300 00	860 00		
do.,	do omitted in 18	34	3	19	80	560 00	....	560 00		
B. C.,		....	....	....	....	....	6000 00	6000 00		
C. D., guardian, (or executor,) of L. M.,		....	....	....	....	....	400 00	400 00		
E. F., guardian of J. H.,	W. ½ of N. E. ¼ of N. W. ¼,	24	3	19	20	120 00	300 00	420 00		
G. H.,	Land bounded N. by lot No. 2, E. by lands owned by A. B., S. by the W. ½ of S. W. ¼ of section 6, and W. by the township line,	6	3	19	12½	87 50	....	87 50		
Unknown,	S. ½,	17	3	19	320	960 00	....	960 00		
do	E. ½ of S. E. ¼,	18	3	19	80	200 00	....	200 00		
do	do omitted in 18	18	3	19	80	200 00	....	200 00		

LOTS

In the Village of , in said Town, described according to the map thereof on record in the Office of the Register of Deeds of said County.

NAMES OF PERSONS TAXED.	NUMBERS OF LOTS.	Block.	Valuation of each lot.	Valuation of all lots.	Valuation of personal property,	Total valuation.	Amount of tax.	REMARKS.
A. B., ...	2, 3, and 4, ...	10	50 00	150 00	50 00	200 00		
A. B., ...	6, ...	10	100 00	100 00		100 00		
C. D., ...	10, ...	20	300 00	300 00	800 00	1100 00		
S. R., ...	Outlot, (or large lot,) 3, five acres, ...	....	....	170 00	....	170 00		
S. R., ...	do omitted in 18	....	....	170 00	....	170 00		

Assessor to assess lands omitted in two previous years.

Sec. 24. If any assessor, when making his assessment, shall discover that any land in his town was omitted in the assessment roll of either or both of the two previous years, and was then liable to taxation, he shall in addition to the assessment of such land for that year assess the same separately for such year or years that it shall have been so omitted, at the just value thereof, when so assessed, noting distinctly the year when such omission occurred, and such assessment shall have the same force and effect as it would have had if made in the year the same was omitted; and taxes to the amount that should have been paid in the year such omission occurred, shall be levied and collected thereon, in like manner, and together with the taxes of the year in which such assessment is made; and all lands shall be subject to taxes, omitted to be assessed, into whosesoever hands they may come.

Taxes to be levied and collected thereon, &c.

Assessor may require oath of person giving in list, &c.

Sec. 25. Every assessor may require any person giving in the amount or list of his taxable property, to make oath before him that the same is full and correct; and any person refusing to make such oath shall not be permitted afterwards to reduce the valuation made by such assessor of his property for that year.

Valuation of property, real and personal, may be fixed by affidavit.

Sec. 26. If any person whose real or personal estate is liable to taxation, shall, at any time before the assessor shall have completed his assessment, make affidavit that the value of his personal estate liable to taxation, after deducting his property invested in the stock of any incorporated company, liable to taxation on its capital, does not exceed a certain sum to be specified in the affidavit; or if he shall prove by the affidavit of himself, and that of a disinterested freeholder of the same town or ward, not of kin to him, that the value of his real estate does not exceed a certain sum to be specified in the affidavit, it shall be the duty of the assessor to value such real or personal estate at the sum specified in such affidavit; and the agent or attorney of any person whose property is assessed may in all cases make affidavit as to its value, and such affidavit shall have the same force and effect as if made by his principal.

Agent or attorney may make the affidavit.

Sec. 27. If any trustee, guardian, executor, or administrator, shall specify by affidavit the value of the personal property possessed by him, or under his control by virtue of his trust, after deducting the stock held by him in any incorporated company liable to taxation in that capacity, the assessor shall value the same at the sum specified in such affidavit; and such person may reduce the valuation of any real estate so held in trust by him, upon his own affidavit, specifying the value thereof, filed with the assessor.

Trustee, &c., may fix valuation of real and personal property held in trust.

Sec. 28. All the real and personal estate, liable to taxation, the value of which shall not have been specified by affidavit as aforesaid, shall be estimated by the assessor at its true cash value.

All property to be assessed at its cash value.

Sec. 29. The assessors shall complete the assessment rolls of their respective towns and wards, on or before the first Monday of July in every year; on which day, at nine o'clock in the forenoon each assessor shall appear at the place where the last town or ward election was held in his town or ward, for the purpose of reviewing his assessment, and may continue such review from day to day so long as shall be necessary for that purpose; and on the request of any person conceiving himself aggrieved, if such person shall

Assessment roll, when to be completed, &c.

not previously have made affidavit concerning the value of the property assessed to him pursuant to this chapter, the assessor shall, on affidavit made as provided in this chapter, reduce the assessment of such person to the sum specified in such affidavit.

Person objecting may offer other proof than his own affidavit.

SEC. 30. If the person objecting to the assessment, can show by other proof than his own affidavit, to the satisfaction of the assessor, that such assessment is erroneous, the assessor shall review and alter the same without requiring the affidavit of such person.

When assessor cannot attend on day fixed, when and how he may afterwards proceed.

Roll open to inspection and alteration until certified.

SEC. 31 If from sickness or other cause any assessor cannot attend at the time and place, as prescribed above, he may review his assessment roll at such place, on any other day prior to the first day of September next thereafter, upon first giving at least six days previous notice thereof, by posting up notices in three or more public places in his town or ward, specifying the time and place for such review; and such assessment roll shall be open for inspection and alteration until the same shall be corrected and certified to by the assessor.

Oaths may be administered by assessor, &c.

SEC. 32. All oaths and affidavits to be administered in the assessment or valuation of property for taxation, may be taken before the assessor, or any person authorized to administer oaths, and the assessor shall cause all such affidavits to be filed in the office of the town clerk.

Certificate to be attached to assessment roll.

SEC. 33. When the assessor shall have reviewed and completed his assessment roll, he shall attach a certificate thereto, signed by him, which shall be substantially in the following form: "I do certify that I have set down in the above assessment roll all the real estate situate in the town (or ward as the case may be,) of liable to be taxed, according to my best information, and that with the exception of those cases in which the value of the said real estate has been fixed by affidavit made pursuant to law, I have estimated the same at what I believe to be the true cash value thereof; that the said assessment roll contains a true statement of the aggregate valuation of the taxable personal estate of each and every person named in said roll, as nearly as I could ascertain the same, and excluding such stocks as are otherwise taxable; and that with the exception of those cases in which the value of such personal estate has been sworn to by the owner, possessor, or agent, I have estimated the same at its true cash value, according to my best information and belief."

When roll to be delivered by assessor to chairman of supervisors, and by him to the board.

SEC. 34. The roll thus certified shall, on or before the first day of October in each year, be delivered by the assessor of each town, to the chairman of the board of supervisors thereof, and by the assessor of each ward in any city to the clerk of the board of supervisors of the county, who shall deliver the same to the county board of supervisors at their next annual meeting.

If town neglect to make out assessment roll, the board of supervisors may.

SEC. 35. If in any year the assessment roll of any town or ward shall not be made out and returned to the county board of supervisors, as required by law, the said board shall for such year, cause a tax list or assessment roll to be made out from the last assessment roll of such town or ward, making such additions thereto and alterations therein, as they may deem just and equitable to make the assessments on all taxable property in such town or ward equal, which tax list or roll so made out shall be acted upon and enforced, and all taxes specified therein shall be collected in like manner as if such roll had been made out and returned as herein before provided.

Assessors to be governed by instructions of secretary of state

SEC. 36. The assessors, in the execution of their duties, shall use the forms and pursue the instructions which may from time to time be transmitted to them by the secretary of state.

Equalization of the Assessments, and manner of Assessing Taxes.

Board of supervisors to ascertain the relative valuation of real estate.

SEC. 37. The board of supervisors of each county shall, at their annual meeting in each year, examine the assessment rolls of the several towns and wards in their county, and ascertain whether the valuation of real estate in each town or ward bears a just relation or proportion to the valuation in all the towns and wards of the county.

May increase or diminish the valuation in any town, but not to reduce the aggregate valuation.

SEC. 38. On such examination, they may increase or diminish the aggregate valuation of real estate, in any town or ward, so much per centum as may in their opinion be necessary to produce a just relation between all the valuations of real estate in the county, and the amount so added or deducted in each case shall be entered upon their records; but in no instance shall they reduce the aggregate valuation of all the towns and wards below the aggregate valuations thereof as made by the assessors.

May alter description of lands, and expunge such as cannot be correctly described.

SEC. 39. They shall also make such alterations in the description of any lands upon such rolls, as may be necessary to render such description conformable to the requirements of this chapter; and if such description cannot be so altered, they shall expunge the description of such lands and the assessments thereon from the assessment roll.

When rolls to be delivered to supervisor of each town, and by him to town clerk.

SEC. 40. After the assessment rolls shall have been thus equalized and corrected, the board of supervisors shall cause the corrected assessment roll of each town or ward, or a copy of the same to be delivered to the supervisor thereof, who shall deliver the same to the clerk of the proper town or city to be filed and kept by him in his office.

Board to enter valuations of taxable property on their records, and clerk to transmit statement to secretary of state.

SEC. 41. The board of supervisors in each county shall also cause to be entered on their records the aggregate valuations of the taxable real and personal property in the several towns and wards of their county, as corrected by them; from which record the clerk of the board shall within ten days after their annual meeting, make and transmit to the Secretary of State, by mail, or otherwise, a certified statement showing the aggregate valuation of the taxable real and personal estate in the county, and the aggregate valuation of such property in each town and ward therein as corrected by the board.

When secretary to apportion state tax among the counties, &c.

To charge each county with its portion of state tax.

SEC 42. Whenever a general state tax shall be required to be raised, and the amount of such tax upon each dollar of the valuations shall not have been previously determined by law, the Secretary of State shall apportion such tax among the several counties, in proportion to the valuation of the taxable property therein, as ascertained from the last returns made to him by the clerks of the several boards of supervisors, and shall before the next annual session of such boards, make out and transmit to each clerk thereof, the amount of such tax so apportioned to his county, and shall in such case, and in all other cases where state taxes are levied, charge to each county the amount apportioned to the same; and each such county shall be liable for the payment into the State Treasury, by the second Monday of February next succeeding the levying of such tax, of the amount so charged to the same.

When counties liable to pay state tax.

Sec. 43. The board of county supervisors, at their annual meeting in each year, shall estimate and determine the amount of moneys to be raised in each town and ward, in their county, for the support of common schools therein for such year, which tax shall be levied and collected in each year, and shall not be less than one half the amount of school moneys apportioned to such town and ward by the state superintendent in his last apportionment of school moneys, nor shall the amount so raised for school purposes exceed three mills on the dollar in any one year, upon the valuations of taxable property in such county; every such determination for the raising of school moneys by the said board, shall be recorded by their clerk, and the sum so determined to be raised, shall be assessed and collected for the use of common schools in each town and ward in such county, in addition to any sum any such town or ward may have voted to raise for the support of common schools therein.

Amount to be raised for schools.

How qualified.

Determination to be recorded, and such amount to be raised as additional.

Sec. 44. Whenever there shall have been no distribution of school moneys to any town or ward in any year, the county board of supervisors shall at their annual meeting in that year direct to be raised, on the valuation of the taxable property in such town or ward, the same per centage or proportionable amount of taxes for the support of common schools therein, as shall be required to be raised for that purpose in the other towns in such county.

How amount of school tax ascertained when town shall not have drawn school moneys preceding year.

Sec. 45. For the purpose of raising a revenue to assist in the support of common schools, until there shall be a distribution from the income of the school fund, the board of supervisors in each county, shall, in each year, until such distribution is made, raise a tax of two and a half mills on the dollar to be apportioned by them upon the taxable property of the several towns and wards in their county, and the same shall be collected as other taxes, and applied to the support of common schools in such towns and wards respectively; but after the first distribution from the income of the school fund, then taxes imposed by the boards of supervisors for the support of schools, shall be levied as provided in the two preceding sections.

How supervisors to raise school tax prior to distribution of school moneys, and amount of same.

Sec. 46. The county board of supervisors, shall also, at their annual session in each year, ascertain and determine the amount of money to be raised by tax for county purposes, and apportion such amount, together with the amount of state tax required to be raised in their county, among the several towns and wards therein in proportion to the valuation of taxable property therein for the year, as equalized by the board; and every such determination and apportionment shall be entered at large in their records.

Board to determine and apportion amount of county tax, &c.

Sec. 47. The clerk of the board of supervisors, shall, immediately after such apportionments, make out two certificates of the several amounts apportioned to be assessed upon the taxable property of each town and ward, for state, county, and school purposes, one of which he shall deliver, or cause to be delivered to the

Clerk of supervisors to make certificates of taxes to be raised, and to whom to deliver same.

County treasurer to charge amount of state and county tax due from each town to same.

county treasurer, and the other to the clerk of the proper town or city, as the case may be, and the county treasurer shall charge the amount of state and county taxes specified in each certificate, to the proper town or city.

When town clerk to deliver statement of taxes to town treasurer.

When treasurer to file bond.

Sec. 48. The town clerk of every town shall, on or before the first day of December, in each year, deliver to the town treasurer of his town, a certified statement, showing separately the amount of state, county and school tax, apportioned to each town, and also the amount of town and other local taxes to be collected therein, specifying the amount of each particular kind of town or other local tax; and such town treasurer shall, within six days after receiving such certified statement, execute to the county treasurer and his successors in office, a bond, in double the amount of state and county taxes so apportioned to his town, with good and sufficient sureties, to be approved by the chairman of the board of supervisors of his town, or the county treasurer, conditioned that he will duly and faithfully perform the duties of his office, and that he will faithfully and truly account for, and pay over, according to law, all such state and county taxes which shall come into his hands, and shall deliver such bond to the county treasurer, to be filed and kept in his office.

County treasurer to file bond and deliver receipt for same to town treasurer, and he to town clerk.

Sec. 49. The county treasurer shall file and safely keep such bond in his office, and on the receipt thereof, he shall give to the town treasurer a receipt, stating that he has received the bond required by the preceding section, which receipt the said town treasurer shall forthwith deliver to the clerk of his town.

Town clerk on receipt of roll and certificate to carry out taxes, including five per cent.

Sec. 50. It shall be the duty of every town clerk, immediately upon the reception of the corrected assessment roll, and a certificate of the amount of state, county, and school tax, apportioned to his town, as aforesaid, to calculate and carry out the total amount of such taxes, together with all town and other local taxes, unless otherwise provided, adding thereto five per cent for expenses of collection, in an additional column prepared for that purpose in the assessment roll, setting opposite to the several sums set down as the valuation of real and personal estate, the respective sums assessed as taxes thereon, in dollars and cents, rejecting the fractions of a cent.

When to deliver roll to town treasurer

Not to be delivered until bond executed and receipt filed

Sec. 51. The said town clerk shall immediately make out a fair copy of such assessment roll, when thus completed, and deliver the same to the town treasurer of his town on or before the second Monday of December in each year, but in no case shall the assessment roll be delivered to such treasurer, until he shall have executed the bond and delivered the receipt required in the forty-eighth and forty-ninth sections of this chapter.

Warrant to be annexed to assessment roll.

Sec. 52. To each assessment roll so delivered, a warrant under the hand of the town clerk shall be annexed, substantially in the following form, to wit; "The state of Wisconsin to , town treasurer of the town of , in the county of : You are hereby commanded to collect from each of the persons and corporations named in the annexed assessment roll, and of the owners of the real estate described therein, the taxes set down in such roll opposite to their respective names, and to the several parcels of land therein described;

and in case any person or corporation, upon whom any such sum or tax is imposed, shall refuse or neglect to pay the same, you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed; and out of the moneys so to be collected, after deducting your fees, you are first to pay to the treasurer of said county, on or before the last Monday of January next, the sum of , for state taxes; you are to retain and pay out, as town treasurer, according to law, the sum of ; and the balance of said moneys you are required to pay to said treasurer for county purposes, on or before the day above specified; by which day you are further required to make return to said treasurer of this warrant, with said roll annexed, together with your doings thereon, as provided by law.

Given under my hand this day of , in the year 18 .

Clerk of said town."

Town clerk to make memorandum, &c., and charge treasurer with town and local taxes.

SEC. 53. As soon as the town clerk shall have delivered the assessment roll and warrant to the town treasurer, as aforesaid, he shall make a memorandum or entry thereof, and charge to such treasurer the amount of the town and other local taxes, if any, in a book to be kept by him for that purpose.

How warrant for collection of state and county taxes in cities to be made out, &c.

SEC. 54. The warrant for the collection of state and county taxes in any city, shall, unless otherwise provided, be made out and signed by the clerk of such city, and annexed by him to the assessment rolls of the several wards therein, and the same shall be delivered to the treasurer thereof for collection, who shall proceed in the collection of the taxes therein specified in like manner as he is required by the charter of such city to collect city taxes; and he shall make return thereof under oath, with the assessment rolls of the several wards annexed, to the county treasurer, in the like time and in the same manner, as nearly as practicable, as town treasurers are required to make their returns in like cases, but the affidavit to be attached to his return shall conform to the duties required to be performed by him in the collection of taxes; and taxes for city or other local purposes may be collected together with the state and county taxes, when so ordered by the common council of such city, and if so collected, they shall be set down in one or more separate columns; but in all cases the tax for the support of common schools in such city, imposed by the county board of supervisors, shall be levied and collected at the same time with the state and county taxes, and retained by the treasurer of such city, and paid over by him as required by law; and the warrant issued to such treasurer shall be so modified as to conform to the provisions of this section.

Taxes for city purposes may be collected with state and county taxes

Taxes for support of schools imposed by supervisors to be collected with state tax.

Collection and Return of Taxes.

How town treasurer to proceed in the collection of taxes.

SEC. 55. Every town treasurer, upon receiving the tax list and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call at least once on the person taxed, or at the place of his usual residence, if in the town, and shall demand payment of the taxes charged to him on such list.

CHAPTER 15.

Town and county orders, &c., payable for taxes, to a certain amount

SEC. 56. Town orders shall be payable for taxes in the town where issued, and shall be allowed the town treasurer on settlement of town taxes, and county orders and jurors' certificates shall be payable for taxes in the county where issued, and shall be allowed to such treasurer on his settlement of county taxes with the county treasurer; but no town treasurer shall receive town orders in payment for taxes, to a larger amount than the town taxes included in his assessment roll, exclusive of all taxes for school purposes, nor county orders and jurors' certificates to a greater amount than the county tax included therein; and he shall, in all cases, pay to the county treasurer the full amount of state tax, in gold and silver coin.

State tax to be paid in gold and silver.

No town or county officer to purchase, &c., town or county orders at a discount.

SEC. 57. No town or county treasurer, or other town or county officer, shall either directly or indirectly purchase, or receive in exchange, or in payment for taxes or otherwise, in any manner whatever, any county or town order, or any demand against his county or town, for a claim allowed by the proper board, during his term of office, for a less amount than that expressed on the face of such order or demand; and any such person, so offending, shall, on conviction thereof, be fined in a sum not less than twenty-five, nor more than two hundred and fifty dollars.

Town treasurer on payment of tax to give a receipt, &c.

SEC. 58. The town treasurer shall, on the payment to him of any tax, give a receipt for the same, therein describing the lands, or specifying the amount of personal property upon which the same is paid, and shall note on his tax roll the payment thereof; and if any such treasurer shall wilfully return to the county treasurer, as unpaid, any tax which has been paid to him, except a double assessment, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment, not exceeding six months, or by fine not exceeding two hundred and fifty dollars, or both, in the discretion of the court.

Penalty for returning tax if paid.

If tax unpaid, treasurer to levy same by distress and sale.

SEC. 59. In case any person shall refuse or neglect to pay the tax imposed on him, the town treasurer shall levy the same by distress and sale of the goods and chattels of such person, wherever the same may be found within his town.

Notice of time and place of sale &c. to be given and how made.

SEC. 60. The town treasurer shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisement, to be posted up in three public places in the town where such sale shall be made; and the sale shall be at public auction, in the day time, and the property sold shall be present; but at any time previous to the sale, the owner or claimant of such property may release the same by the payment of the taxes, interest and charges for which the same is liable to be sold.

Owner may release property on payment of taxes &c.

If purchase money not paid, treasurer may resell or sue for same.

SEC. 61. Whenever the purchase money on such sale shall not be paid at such time as the town treasurer shall require, he may in his discretion again expose the property for sale, or sue in his name of office such purchaser, for the purchase money, and recover the same with costs and ten per cent damages.

If property not sold, how tax to be returned.

SEC. 62. If property so distrained cannot be sold for want of bidders, the treasurer shall return a statement of the fact, and the tax, if unsatisfied, shall be collected in the same manner as if no levy had been made.

SEC. 63. In case any person upon whom any tax may be assessed, shall have removed out of any town or ward where the assessment was made against him, after such assessment, and before such tax ought by law to be collected, it shall be lawful for the treasurer of such town to levy and collect such tax, of the goods and chattels of the person so assessed, wherever the same may be found within the county where such assessment was made.

If person liable to pay tax shall have removed, treasurer may collect same within the county.

SEC. 64. If the property distrained shall be sold for more than the amount of the tax and costs, the surplus shall be returned to the owner of such property.

Surplus of sale to be returned to owner.

SEC. 65. The town treasurer shall receive the tax on any part of any lot or parcel of land, or on any undivided share or interest therein which the person paying the tax will clearly define; and if the tax on the remainder of such lot or parcel of land shall remain unpaid, such treasurer shall return such remainder, and the tax due thereon, to the county treasurer; and if the part on which the tax is so paid shall be an undivided share, the person paying the same shall state to the town treasurer the name of the owner of such share, that it may be excepted in case of sale for the tax on the remainder; for which purpose the town treasurer shall enter the name of such owner and a specification of such share in his account of arrears of taxes; and the balance of taxes on any such land shall be a lien on the residue only of such lot or parcel of land.

Treasurer to receive tax on any part of lot or undivided share.

Remainder of lot, &c, to be returned.

Treasurer to note name of owner and description of share on which tax paid, &c.

SEC. 66. When any town treasurer discovers that any land has been assessed more than once for the same year, he shall collect only the tax justly due thereon, and shall make return of the balance as a double assessment, and he shall be credited therefor by the county treasurer, as provided in the seventy-second section of this chapter.

Double assessments, how collected and returned, &c.

SEC. 67. Each town treasurer shall receive five per cent on all sums collected and paid by him as such treasurer, until the aggregate shall amount to two thousand dollars, and on all sums collected and paid over that amount, two and a half per cent, to be retained out of the moneys he may so collect or receive; and in case of a distress and sale by him of goods and chattels for the payment of any tax, he shall be entitled to collect and receive from the same, in addition, such fees as constables are authorized to receive for levying upon and selling goods under execution.

Fees of town treasurer for collections.

SEC. 68. The town treasurer shall retain in his hands the amount specified in his warrant to be paid into the town treasury, together with his fees, and shall, on or before the day specified in his warrant for paying the money therein directed to be paid to the county treasurer, pay to him the sum so directed to be paid, in the manner required by law; and in every case the town treasurer shall pay over the full amount of state tax, though it may occasion a deficiency in the town taxes.

How town treasurer to dispose of moneys collected by him.

State tax to be paid first.

SEC. 69. In case there shall be a deficiency of cash funds in the town treasury to pay all the charges thereon in any year, then the town treasurer shall set apart, in the order specified below, a sufficient amount of such funds to pay in full each of such charges, so far as such funds will extend, and he shall pay the same in the order and for the objects herein specified, to wit:

If deficiency of funds in town treasury, how same to be set apart and applied.

1. The amount of moneys raised for common school purposes, and returned taxes collected for any school district:

2. The amount raised for the support of the poor:

3. All moneys raised for highways and bridges, and returned taxes collected for any road district:

General claims to be paid in the order they are presented.

4. The amount of moneys raised for all other town purposes, shall be applied to the payment of all other lawful claims upon the town treasury, in the order in which such claims may be presented, when there are funds in the treasury.

How return of unpaid taxes to be made

Land doubly assessed to be returned, and county treasurer to compare return with tax roll.

SEC. 70. If any of the taxes mentioned in the tax list annexed to his warrant, either on real or personal estate, shall remain unpaid, and he shall be unable to collect the same, he shall make out a statement of the taxes so remaining unpaid, distinguishing by setting down separately, between such as are on real and such as are on personal estate, with a full and correct description of such real estate from his tax roll, and the name of the person taxed, if therein specified, and submit the same to the county treasurer; he shall also include in such statement a description of any land doubly assessed, and the amount of tax thereon, and also the specication and entry required by the sixty-fifth section of this chapter; the county treasurer shall carefully compare such statement when submitted with the tax roll, to ascertain that it is correct.

Form of return of town treasurer.

SEC. 71. The return of the town treasurer to the county treasurer of delinquent taxes, may be made in tabular form, and varied as facts may require; but when so made, shall be, as nearly as convenient, after the following form:

RETURN

Of , Treasurer of the town of , in the county of and State of Wisconsin, containing a description of the lands and the taxes thereon, and the valuation of personal property, and the taxes thereon, (if any,) assessed in said town, in the year , which taxes remain due and unpaid for the years herein specified, to wit:

Names of Persons Taxed.	Description of Lands and Statement of Personal Property.	Section.	Township.	Range.	No. of acres.	Amount of tax.	Years for which taxes are due.	Remarks.
						$ cts.		
A. B.,	W. ½ of N. E. ¼,	34	3	19	80	5 60	1848	
C. D.,	Undivided ⅔ of E. ½ of N. E., ¼,	34	3	19	53⅓	2 74	1848	
do.,	do omitted in 18 ,	34	3	19	53⅓	2 25	1847	
Unknown,	E. ½ of S. E. ¼,	18	3	19	80	2 00	1848	
A. B.,	Personal property, valuation, $300,					3 00		

The taxes on the following shares of parcels of land above returned have been paid by the following named owners :

E. F.,	Undivided ⅓ of the E. ½ of N. E. ¼,	34	3	19	26⅔	$1 37	1848	REMARKS.

The following land is returned as doubly assessed for the year 1848.

						$ cts.		
R. S.,	S. ½,	17	3	19	320	9 60	1848	REMARKS.
Unknown,	W. ½ of N. W. ¼,	4	3	19	80	2 00	1848	

C. H. *Town Treasurer.*

Affidavit to be made and annexed to return.

SEC. 72. The town treasurer shall then make an affidavit, to be annexed to such statement, before the county treasurer, or before any officer authorized to administer oaths, that the facts set forth in said statement are correct, that the sums therein returned as unpaid taxes have not been paid, and that he has not upon diligent enquiry been able to discover any goods or chattels belonging to the persons charged with such unpaid taxes whereon he could levy the same; which statement and affidavit shall be filed with the county treasurer; and he shall thereupon be credited by the county treasurer with the amount of taxes so returned as unpaid and doubly assessed; and for making such return he shall be entitled to receive one dollar and six cents per mile, travel fee, one way, to be allowed and paid to him by the county treasurer on settlement.

Town treasurer to be credited, &c., and his fee for making return.

Upon settlement, town treasurer's bond to be indorsed satisfied, and effect of same.

SEC. 73. Upon settlement as aforesaid of the amount of taxes to be collected by the town treasurer and paid to the county treasurer, such county treasurer shall endorse the bond of such town treasurer filed in his office as satisfied and paid; and the indorsement so made shall operate as a full discharge of such town treasurer and his sureties from the obligations of such bond, unless it shall afterwards appear that the return of such town treasurer was false, in which case such bond shall continue in force, and such collector and his sureties shall be liable to be prosecuted thereon for all deficiencies, and for all damages occasioned by such false return.

When county treasurer may issue warrant for collection of unpaid taxes on personal property, &c.

SEC. 74. Whenever a tax on personal property shall be included in any assessment roll, and shall have been returned as unpaid in whole or in part by the town treasurer, as required by law, the county treasurer may, at any time within three years thereafter, issue a warrant under his hand, directed to the sheriff of his county, commanding him to levy the amount of such unpaid taxes, together with his fees for collecting the same, of the goods and chattels, lands and tenements, of the person to whom such taxes were assessed, and to pay the same to the county treasurer and return such warrant within sixty days from the date thereof; or said treasurer may, at any time within said three years sue for and recover such unpaid taxes, in an action to be brought in the name of the board of supervisors of his county against such person, in any county where he may be found, and the assessment roll and town treasurer's warrant and return, or abstracts therefrom certified by the county treasurer under his seal of office, shall be prima facie evidence of such tax, of its being unpaid and the amount which should be recovered in such action.

Assessment roll, &c., to be evidence.

When town board may appoint town treasurer.

SEC. 75. In case the town treasurer of any town shall refuse to serve, or shall die, resign, or remove out of the town, before he shall have entered upon or completed the duties of his office, or shall be disabled from completing the same from any cause, the town board shall forthwith appoint a town treasurer for the remainder of the term, who shall give like security, and be subject to like duties and penalties, and have the same powers and compensation, as the town treasurer in whose place he was appointed; and the town clerk shall forthwith give notice of such appointment to the county treasurer; but such appointment shall not exonerate the

Town clerk to give notice to county treasurer.

former town treasurer or his sureties from any liability incurred by him or them.

If warrant issued to former treasurer, to be delivered to the treasurer appointed, &c

When board may extend time for collecting taxes

SEC. 76. If a warrant shall have been issued by the town clerk prior to an appointment under the last section, the original warrant and the tax list, if the same can be obtained, shall be delivered to the town treasurer so appointed, and shall be considered as giving him the same power as if originally issued to himself; but if such warrant and tax list cannot be obtained, a new one shall be made out by the town clerk, which shall be directed to the town treasurer so appointed, upon which he shall collect only the balance of taxes remaining unpaid, and shall be responsible only for the same. Upon any such appointment the town board, if they shall think it necessary, may, by writing under their hands, endorsed upon the assessment roll, extend the time limited for the collection of the taxes for a period not exceeding thirty days.

When town clerk shall deliver warrant and tax list to sheriff.

Sheriff to give bond and collect taxes, &c.

SEC. 77. In case the town treasurer shall neglect or refuse to file his bond with the county treasurer, in the manner and within the time prescribed by law, and the town board shall fail to appoint a town treasurer, or he shall fail to give such bond and deliver a receipt for the same to the town clerk by the first Monday of December of the year in which he is appointed, the town clerk shall deliver to the sheriff of the county the original warrant and tax list, if the same can be obtained, and if not, then the same shall be made out anew, and signed and delivered by him to such sheriff, to be executed by himself or his deputy, who shall execute to the county treasurer a like bond as is required of the town treasurer, and shall make like collections and returns, and shall be entitled to the same compensation, and be responsible to the same extent as town treasurers appointed by town boards, on all taxes so handed over to him for collection; aud for the purpose of collecting the same shall be vested with all the powers conferred upon town treasurers.

Proceedings against town treasurer for neglect to pay moneys, or to account.

Proof to be first made in certain cases.

Bond may be prosecuted.

SEC. 78. If any town treasurer shall refuse or neglect to pay to the several officers in his town, or their order, or to the county treasurer the sums in his hands required by law to be paid to them respectively, or either of them, or their order, or if he shall neglect or refuse to account for the moneys required to be collected and paid by him to them, or either of them, as provided by law, the county treasurer shall issue a warrant under his hand, directed to the sheriff of the county, commanding him to levy such sum as shall remain unpaid or unaccounted for, together with his fees for collecting the same, and interest and damages as specified in the one hundred and twenty-fourth section of this chapter, of the goods and chattels, lands and tenements of such town treasurer, and his sureties, and to pay the same to the connty treasurer, and return such warrant within sixty days from the date thereof; but no such warrant shall be issued by the county treasurer, for the collection of moneys payable to town officers or their order, without proof by affidavit of the refusal or neglect of such town treasurer to pay the same, or account therefor, as provided by law; and nothing in this section contained, shall be construed as prohibiting a prosecution upon any town treasurer's bond, in case of a breach thereof.

Warrant to be delivered to sheriff, and his duties relative thereto.

SEC. 79. The county treasurer shall forthwith deliver such warrant to the sheriff of the county, who shall immediately cause the same to be executed, and shall make return thereof to the county treasurer within the time therein specified, and pay to him the amount required by such warrant, and such sheriff shall be entitled to collect and receive the same fees as are allowed by law to sheriffs on execution.

Moneys when collected, how to be paid.

SEC. 80. So much of the moneys so collected, as ought to have been paid by the town treasurer to any town officer or other person, shall be paid by the county treasurer to such officer or person; and if the whole amount of moneys due from the town treasurer, shall not be collected on such warrant, the county treasurer shall first retain the amount of state tax which should have been collected and paid over to him by such delinquent town treasurer; he shall next pay over the amount of town and local taxes to the officer or person aforesaid, entitled to receive the same, and the balance, if any, he shall retain for county purposes.

Proceedings against sheriff, if he neglect to return warrant, pay money collected, &c.

SEC. 81. If any sheriff shall neglect to return any such warrant, or to pay the money collected thereon, within the time limited for the return of such warrant, or shall make a false return thereto, the county treasurer shall forthwith proceed to collect of him the whole sum directed to be levied by such warrant, in the same manner as such sheriff might be proceeded against for neglecting to return an execution in a civil suit.

If treasurer fail to collect money, sheriff's bond to be prosecuted, &c.

SEC. 82. If the county treasurer shall in such case fail to collect such moneys, he shall forthwith cause a prosecution upon the official bond of such sheriff, to be had against him and his sureties, for the sum due on such warrant, which sum, when collected, shall be applied and paid by the county treasurer, in the same manner as specified in the eightieth section of this chapter.

When land may be discharged from tax before sale.

SEC. 83. Any person may discharge the taxes on any parcel of land returned as aforesaid, or on any part thereof, or undivided share therein, by paying the same with interest at twelve per cent from the first day of January previous, and lawful charges, to the county treasurer, at any time before they are sold for taxes, and shall be entitled to a receipt therefor, as specific as if the taxes had been paid to the town treasurer.

When state taxes to be paid to state treasurer.

SEC. 84. On or before the second Monday of February in each year, the several county treasurers shall pay to the state treasurer, in gold and silver coin, the amount of state taxes charged to their respective counties; which moneys, when so paid, shall be credited by the state treasurer to the county so paying the same.

Sale of Lands for Unpaid Taxes, and the Conveyance and Redemption thereof.

When lands on which taxes are not paid are liable to be sold.

SEC. 85. All lands returned to the county treasurer, as provided by law, upon which the taxes, interest, and charges, shall not be paid by the first day of February next after the return thereof, shall be subject to sale as hereinafter provided.

County treasurer to give notice of sale, and what to contain.

SEC. 86. The county treasurer shall, immediately after the day specified in the preceding section, make out a statement of all such lands, containing a brief description thereof, with an accompanying notice, stating that so much of each tract or parcel of land described in said statement, as may be necessary for that purpose, will, on the second Tuesday of April next thereafter, and the next succeeding days, be sold by him at public auction at some public place, naming the same, at the seat of justice of the county, that he may select, for the payment of the taxes, interest, and charges thereon; and if in any county no seat of justice shall be established, then at such public place therein as he shall select.

Notice to be published and posted four weeks prior to sale

SEC. 87. The county treasurer shall cause such statement and notice to be published in a newspaper printed in his county, if there be such newspaper, and if none, then in a newspaper printed in an adjoining county, if there be such newspaper printed therein; but if there is no such newspaper printed in the same or an adjoining county, then such statement and notice shall be published in some newspaper printed at the seat of government; which statement and notice shall in all cases be published once in each week for four successive weeks prior to the said second Tuesday of April; and such treasurer shall also, at least four weeks previous to said day, cause to be posted up copies of said statement and notice in at least four public places in such county, one of which copies shall be posted up in some conspicuous place in his office.

Printer to transmit affidavit of publication, &c.

SEC. 88. Every printer who shall publish such statement and notice, shall, immediately after the last publication thereof, transmit to the treasurer of the proper county an affidavit of such publication, made by some person to whom the fact of publication shall be known; and no printer shall be paid for publishing any such statement and notice, who shall fail so to transmit such affidavit within six days after the last publication thereof.

Treasurer to make affidavits of posting notices and preserve same.

SEC. 89. The county treasurer shall also make or cause to be made an affidavit or affidavits of the posting of such statement and notice as above required, which affidavits, together with the affidavit of publication, shall be carefully preserved by him, and deposited as hereinafter specified.

When sale to commence, and how long to continue.

SEC. 90. On the day designated in the notice of sale, the several county treasurers shall commence the sale of those lands on which the taxes, interest, and charges shall not have been paid, and shall continue the same from day to day, (Sundays excepted,) until so much of each parcel thereof shall be sold as shall be sufficient to pay the taxes, interest and charges thereon; and all moneys received on such sale shall be paid into the county treasury.

Who to be deemed purchaser, and how land to be sold.

SEC. 91. The person at such sale offering to pay the taxes, interest, and charges on any tract or parcel of land, for the least quantity thereof, shall be the purchaser of such quantity, which shall be taken from the north side or end of such tract or parcel, and shall be bounded on the south by a line running parallel with the northerly line thereof, if such line be a single straight line, otherwise the south line of the portion so sold, shall run due east and west; and in case no bid shall be made for the payment of the taxes, interest and charges on any such tract or parcel of land for a portion thereof, then the whole of such tract or parcel shall be sold.

Sec. 92, The county treasurer may in his discretion require immediate payment of every person to whom any parcel of such land shall be struck off, and in all cases where payment is not made in twenty-four hours after the bid, he may declare such bid cancelled and sell the land again, or may sue the purchaser for the purchase money, and recover the same with costs and ten per cent damages; and any person so neglecting or refusing to make payment, shall not be entitled after such neglect to have any bid made by him received by the treasurer during such sale.

Treasurer may require immediate payment, and when land resold, or purchase money recovered.

Penalty for neglect to pay purchase money.

Sec. 93. If any parcel of land cannot be sold for the amount of taxes, interest and charges thereon, it shall be passed over for the time being, but shall before the close of the sale be re-offered for sale; and if the same cannot be sold for the amount aforesaid, the county treasurer shall bid off the same for the county for such amount.

If land not sold, to be re-offered; and if still unsold, to be bid off for county.

Sec. 94. All lands bid off for the county as provided in the preceding section, shall continue liable to be taxed in the same manner as if they were the property of individuals, and such taxes and the interest and charges thereon shall be a lien on such lands, and shall be paid out of the county treasury while such lands belong to the county, but no land so bid in for the county shall be offered for sale for any taxes levied thereon subsequent to such bid, until it shall have been redeemed, or shall be sold by the county, or the tax certificate issued to the county shall have been assigned.

All lands bid off for county, liable to be taxed, but not to be sold whilst owned by county.

Sec. 95. When any lands so bid off for any county shall not be redeemed as provided by law, the clerk of the board of supervisors shall execute to the county in his name of office, a deed of release therefor, witnessed and acknowledged in like manner as deeds to individuals, which shall have the same force and effect as conveyances executed by said clerk to individuals for lands sold for taxes.

Clerk of board to execute to county, deed of release for lands not redeemed.

Sec. 96. The board of supervisors of any county may, by an order to be entered in their records, authorize the clerk of their board, or any other person, to sell and assign the tax certificates issued for lands bid off for such county, and also to sell and convey, by deed duly executed and delivered by such clerk or other person, under his hand and seal, for such county, any such lands for which a deed of release has been executed to the same, as provided in the preceding section.

Board of supervisors may authorise their clerk or other person, to sell tax certificates and lands bid in for taxes.

Sec. 97. When any land is offered for sale for any taxes, it shall not be necessary to sell the same, as the property of any particular person, and if it should be sold as the property of any such person, no misnomer of the owner or supposed owner, or other mistake respecting the ownership of such land, shall ever affect the sale or render it void or voidable.

Lands sold for taxes need not be sold as the property of any person, and misnomer not to vitiate.

Sec. 98. The county treasurer shall give to each purchaser, on the payment of his bids, and if the same be struck off to the county, then to such county, a certificate in writing, dated the day of the sale describing the lands purchased, the amount paid therefor, and the time when the purchaser will be entitled to a deed; which certificate shall be assignable, and any person's interest therein may be transferred by a written assignment, indorsed upon or attached to the same, and such assignment shall have the same force and

Treasurer to give to purchaser certificate of sale.

Certificate assignable &c.

effect as the assignment of bonds for the conveyance of lands, and such certificate, if acknowledged by the treasurer and certified by a person authorized to take the acknowledgment of deeds, may be recorded in the office of the register of deeds of the proper county.

On close of sale, the treasurer to deposit with clerk of supervisors all affidavits &c.

SEC. 99. Every county treasurer shall, immediately after the close of any sale of lands for taxes, deposit in the office of the clerk of the board of supervisors of his county, all affidavits, notices and papers in relation to such tax sale, to be filed and preserved therein; also a statement containing a particular description of each tract and parcel of land so sold by him, specifying the name of the person to whom sold, the amount for which the same was sold, and the name of the owner, if known; and the said treasurer and clerk shall each record such statement, in a book to be kept by each of them for that purpose in their respective offices

Unredeemed lands to be advertised, and how, and what notice to contain.

SEC. 100. The clerk of the board of supervisors in each county shall, at least six months before the expiration of the time limited for redeeming lands sold as aforesaid, cause to be published in a newspaper printed in his county, if there be such newspaper, and if none, then ia a newspaper printed in an adjoining county, if there be one, but if there is no such newspaper printed in the same or an adjoining county, then in a newspaper printed at the seat of government, once a week for twelve successive weeks, a list of all unredeemed lands, specifying each tract or lot, the name of the person to whom assessed, if to any, and the amount of taxes, charges, and interest calculated to the last day of redemption due on each parcel, together with a notice that unless such lands be redeemed on or before the day limited therefor, specifying the same, they will be conveyed to the purchaser.

If no newspaper published in county, how notice to be posted.

SEC. 101. If no newspaper be published in such county, the clerk of the board of supervisors shall, at least three month previous to the time limited for the redemption of any lands sold for taxes, cause to be posted up copies of the list and notice specified in the preceding section, in at least four public places in his county, one of which copies shall be posted up in some conspicuous place in his office.

Land may be redeemed within three years, and how.

SEC. 102. The owner or occupant of any land sold for taxes, or any other person, may at any time within three years from the date of the certificate of sale, redeem the same or any part thereof, or interest therein, by paying to the clerk of the board of supervisors of the county where such land was sold, for the use of the purchaser, his heirs or assigns, the amount for which such land was sold, and all subsequent charges thereon authorized by the provisions of this chapter, or such proportion thereof as the part or interest redeemed shall amount to, with interest on the amount of purchase money at the rate of twenty-five per cent per annum from the date of such certificate; but whenever any land sold for taxes shall be redeemed within six months after the sale thereof, interest as aforesaid shall be paid for six months: Provided, however, that in all cases, any such person may in like manner redeem any such lands, or any part thereof, or interest therein, at any time before the tax deed executed upon such sale is recorded, and when so redeemed, such deed shall be void.

Land may be redeemed before tax deed is recorded.

On redemption of lands all taxes and charges, &c., paid by purchaser, to be paid in certain cases.

SEC. 103. The person wishing to redeem any lands sold for taxes, in addition to the amount to be paid by him, as specified in the preceding section, shall, before the same shall be redeemed, pay all other taxes and charges on the land, or the part thereof, or interest therein, songht to be redeemed, imposed subsequent to such sale, and paid by such purchaser or his assigns, prior to redemption, with interest thereon at twelve per cent per annum: Provided, vouchers or other evidence of the payment of such last named taxes and charges, shall have been deposited with the clerk of the board of supervisors of the county where such land is situate, or produced to such owner or other person seeking to redeem.

When lands of minors, married women, &c., may be redeemed.

SEC. 104. The lands of minors, or any interest they may have in lands sold for taxes, may be redeemed at any time before such minor becomes of age, and during one year thereafter, and the lands of idiots, married women, and insane persons, so sold, or any interest they may have in the same, may be redeemed at any time within five years after such sale, and such redemption shall be made in the same manner as provided in the last two preceding sections.

Upon redemption of land, clerk to execute certificate, &c.

SEC. 105. Upon the redemption of any land sold for taxes, by payment to the clerk of the board of supervisors, such clerk shall execute to the person so redeeming a certificate specifying therein the name of the purchaser, the land redeemed, and the amount of the redemption money paid, and such clerk shall also enter on the sale list kept by him, the name of the person redeeming, the sum paid therefor by him, and the time when paid; which certificate, before it shall be evidence of such redemption, shall be presented to the treasurer of the same county, and countersigned by him, and he shall also make a similar entry on the sale list kept by him with that above required to be made by such clerk.

Certificate to be countersigned, &c

Clerk to pay over redemption moneys, &c.

SEC. 106. The clerk of the board of supervisors, shall, upon the demand of any person entitled to any redemption money in his hands, forthwith pay the same to such person, and at the expiration of his term of office, shall pay over to his successor in office, all redemption moneys in his hands.

If certificate lost, board of supervisors may cause deed to be issued to rightful owner, &c.

SEC. 107. Whenever any certificate, given by the county treasurer for lands sold for taxes, shall be lost or wrongfully withheld from the owner, and such lands shall not have been redeemed, the board of supervisors may receive evidence of such loss or wrongful detention, and on satisfactory proof of the fact, may cause a deed as aforesaid to be executed to such person, as may appear to them to be the rightful owner of the land described in such certificate; but no such deed, if wrongfully or improperly granted, shall be binding on the county in respect to any of its covenants, nor shall it vest any right, title or interest in the grantee or his assigns.

If owner lose certificate, and land be redeemed, how he may draw redemption money

SEC. 108. If there shall be a loss or wrongful detention of any such certificate, and the land therein described shall have been redeemed, any person may exhibit to the county treasurer, evidence of such loss or detention, and upon his making the same satisfactorily appear to such treasurer, and upon his executing to him a bond with sufficient security, to be approved by the treasurer, that such person will refund such redemption money with twelve per cent interest thereon, if any other person shall thereafter show his right thereto, such treasurer shall pay such redemption money to the person so executing such bond.

If land unredeemed, when clerk of supervisors to execute deed to purchaser, &c.

SEC. 109. If any land sold for taxes shall not be redeemed as aforesaid, the clerk of the board of supervisors of the county where the same was sold, shall, after the expiration of the time prescribed by law for the redemption thereof, on the presentation to him of the certificate of sale, execute in the name of his county as clerk of the board of supervisors thereof, under his hand and seal, to the purchaser, his heirs, or assigns, a deed of the land so remaining unredeemed, and shall acknowledge the same, which shall vest in the grantee an absolute estate in fee simple in such land, subject, however, to all unpaid taxes and charges, which are a lien thereon, and to redemption, as provided in this chapter; and such deed duly witnessed and acknowledged, shall be prima facie evidence of the regularity of all the proceedings, from the valuation of the land by the assessor inclusive, up to the execution of the deed, and may be recorded with the like effect as other conveyances of land.

Effect of deed, and same to be evidence of regularity of proceedings.

When county treasurer to withhold certificate and deed, and to refund the amount paid.

SEC. 110. If the county treasurer shall discover, before the sale as aforesaid, that on account of irregular assessments, or for any other error, any of said lands ought not to be sold, he shall not offer the same for sale, and if after any certificate shall have been granted upon the sale of the same as aforesaid, the clerk of the board of supervisors shall discover that for any error or irregularity the lands so sold ought not to be conveyed, he shall not convey the same, and the county treasurer shall on demand, refund the amount paid therefor on such sale, and all subsequent taxes and charges paid thereon by the purchaser or his assigns, out of the county treasury, with interest on the whole amount at the rate of seven per cent per annum.

When county board may refund purchase money, &c, after conveyance, &c.

SEC. 111. If after the conveyance of any lands sold for taxes, it shall be discovered that the sale was invalid, the county board of supervisors shall cause the money paid therefor on the sale, and all subsequent taxes and charges paid thereon by the purchaser or his assigns, to be refunded with interest on the whole amount at the rate of seven per cent per annum, upon the re-delivery of the deed to be cancelled; and in all such cases if the county treasurer shall have offered to the person entitled thereto his money as aforesaid, and such person shall refuse to receive the money and cancel the deed, he shall never be entitled to receive any interest on the money so paid by him after the day of such offer and refusal; nor shall any recovery ever be had against the county on the covenants of such deed.

When uncollected tax on land may be collected the succeeding year.

SEC. 112. Whenever on account of an erroneous or defective description of any lands or any other error or defect, if such lands were justly taxable, the same shall have been stricken from the assessment roll, or shall have been omitted to be sold at any tax sale; or when so sold, the clerk of the board of supervisors shall withhold the tax deeds therefor, as provided by law, the county board of supervisors shall cause such lands to be correctly described, and such uncollected tax to be entered and collected upon the assessment roll of the next succeeding year, in the same manner as the taxes assessed in such last named year; but if such lands cannot be correctly described, or if from any other cause the tax so unpaid cannot be collected on the same, said board shall raise such tax, or so much thereof as would have belonged to the county and state revenue, upon the proper town or ward, or otherwise correct such error as they shall deem equitable.

If tax cannot be collected on land, same to be collected of the proper town.

Sec. 113. If any portion of the uncollected taxes, mentioned in the preceding section, shall be collected and paid into the county treasury, which belong to any town, or to any school or road district, in any town, such taxes shall be drawn by the treasurer of the town in which they belong, and paid over by such treasurer as the law requires; and the amount of every such tax, belonging to any town, school, or road district, shall be ascertained from the record of taxes in the town for the year in which such uncollected taxes were assessed.

Moneys in county treasury belonging to town, to be drawn by town treasurer &c.

Sec. 114. If any person within two years after the payment of any tax by him, can satisfactorily show to the county board of supervisors that the same was improperly assessed, or was paid by mistake when it was not legally chargeable, the said board shall order the same to be repaid by the county treasurer; and if the tax so refunded, or any portion thereof be properly chargeable to any town, it shall be so charged.

If tax improperly paid, to be refunded within two years, &c.

Sec. 115. All taxes assessed on any tract or parcel of land, and all costs, charges and interest thereon, shall be a lien on such land until paid, and all costs and expenses which shall accrue jointly or in the aggregate on two or more tracts or parcels of land, shall be apportioned in equal parts upon the several tracts or parcels.

Taxes to be a lien on lands, and costs on two or more parcels to be apportioned.

Miscellaneous Provisions.

Sec. 116. Any person who has a lien, by mortgage or otherwise, upon any lands on which the taxes have not been paid, may pay such taxes, and the interest and charges thereon, and the receipt of the person authorized to receive such tax, shall constitute an additional lien on such land, to the amount therein specified, and the interest thereon; and the amount so paid and interest thereon shall be collectable with, as part of, and in the same manner as the amount secured by the original lien.

Persons having lien on lands may pay taxes and collect same.

Sec. 117. The provisions of this chapter relative to towns, shall be construed as applying to cities or wards, where the same are applicable, unless otherwise provided; but whenever a city constitutes part of a town, it shall, for the purpose of raising state, county, and town revenue, be regarded as part of such town.

Provisions relative to towns, when applicable, to apply to cities and wards, &c.

Sec. 118. The treasurer of any city, acting in the capacity of a collector of taxes under the provisions of this chapter, shall, so far as practicable, unless otherwise provided, exercise the same powers and perform the same duties as are herein conferred upon and required of town treasurers, and such city treasurer shall be subject to the same penalties and liabilities, as are herein provided for town treasurers.

City treasurer to act as collector, same as town treasurer, &c

Sec. 119. All losses which may be sustained by the default of any officer of any town or city, in the discharge of the duties imposed by this chapter, shall be chargeable on such town or city,

Losses sustained by default of any town, city or county officer, how to be charged and collected.

and all losses that may be sustained by the default of any county officer in the discharge of such duties, shall be chargeable on such county; and the county board of supervisors shall add such losses to the next year's taxes of such town, ward, or county, as the case may be.

When tenant may recover tax on land paid by him, and how.

SEC. 120. When any tax on any real estate shall have been paid by or collected of any occupant or tenant, and any other person, by agreement or otherwise, ought to pay such tax or any part thereof, such occupant or tenant shall be entitled to recover by action the amount which such person ought to have paid, with interest thereon at the rate of twelve per cent; or he may retain the same from any rent due or accruing from him to such person for the real estate on which such tax is so paid.

If treasurer fail to sell lands at the time fixed, when may afterwards sell same.

SEC. 121 If the county treasurer shall in any year unavoidably omit or fail to sell the lands returned for delinquent taxes, at the time fixed in the eighty-sixth section of this chapter, he shall advertise and sell such lands on the second Tuesday of September next ensuing; and such advertisement and sale shall conform in all respects to the provisions of this chapter, and shall be as valid and binding as like sales made on the second Tuesday of April.

If clerk fail to advertise unredeemed lands, may do so within five years, and deed same

SEC. 122. Whenever the clerk of the board of supervisors shall fail to advertise the list of unredeemed land sold for taxes, within the time above specified therefor, the same may be advertised as provided in sections one hundred and one hundred and one of this chapter, at any time thereafter within five years from the time the same were sold, and when so advertised, such clerk shall deed the same in like manner and with the same effect as though they had been advertised within the time specified in the one hundredth section of this chapter.

When suits to recover lands sold for taxes to be commenced.

SEC. 123. Any suit or proceeding for the recovery of lands sold for taxes, except in cases where the taxes have been paid, or the lands redeemed as provided by law, shall be commenced within three years from the time of recording the tax deed of sale, and not thereafter.

Penalty on town treasurer if he fail to settle or pay over moneys collected.

SEC. 124. If any town treasurer shall fail to make settlement of the taxes included in his assessment roll, within the time required by this chapter, the county treasurer shall charge such town treasurer five per cent damages, and twelve per cent interest per annum, from the day payment should have been made on the balance of unsettled taxes due from him; and if any town treasurer shall withhold the payment of any public moneys collected or received by him after the same should be paid, and shall have been demanded, he shall be liable to pay ten per cent damages, and twelve per cent interest, as above specified, on such moneys; which moneys, damages, and interest, may be collected by suit upon such town treasurer's bond, or as provided in the seventy-eighth section of this chapter.

Person injured by false return, &c., of town treasurer, to recover double damages.

SEC. 125. If any person shall be injured by the false return, or fraudulent act of any town treasurer, such person shall recover, upon suit brought on the bond of such treasurer, of him and his sureties, double damages and costs of suit.

Deed invalid, if taxes have been paid.

SEC. 126. No sale of lands for taxes, and no deed made in pursuance thereof, shall be of any validity, if the taxes for which the same are sold shall have been paid prior to such sale.

Moneys collected for a specific object not to be applied to any other object.

SEC. 127. Whenever any moneys shall have been collected or received by any officer for any distinct or specific object or purpose, no portion of them shall be paid or applied to any other object or purpose, without due authority, but shall be kept a separate fund for such specific object; and any officer failing to comply with the provisions of this section, shall be liable to a fine, not exceeding five hundred dollars, or to imprisonment not exceeding six months.

Penalty on officer neglecting to perform duties imposed by this chapter

SEC. 128. Any officer who shall wilfully neglect or refuse to perform any of the duties imposed upon him by this chapter, shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by fine or imprisonment, the fine not to exceed five hundred dollars, nor the imprisonment six months.

Penalty on county treasurer for failure to pay moneys into state treasury as required.

SEC. 129. Whenever any county treasurer shall fail to pay into the state treasury any moneys in his hands for that purpose, at the time prescribed by law, he shall, in addition to other penalties, be liable to the following: If he shall so fail, for the space of ten days, he shall forfeit to the state twenty per cent on the amount withheld; and if he shall fail to pay over such moneys for the space of thirty days after such specified time, he shall forfeit his office of treasurer, and be deemed a public defaulter.

When grantor, and when grantee shall pay the taxes.

SEC. 130. As between the grantor and grantee of any land, when there is no express agreement as to which shall pay the taxes that may be assessed thereon, before the conveyance, if such land is conveyed even with, or prior to the date of the warrant authorizing the collection of such taxes, then the grantee shall pay the same; but if conveyed after that date, the grantor shall pay them.

Treasurer's books, lists of lands, &c, to be evidence.

SEC. 131. The entries made in the county treasurer's books, the assessment rolls, and the warrants thereto attached, and the lists of lands sold for taxes recorded by such treasurer, or by the clerk of the board of supervisors, shall be prima facie evidence in all judicial proceedings.

Secretary of state to transmit blank assessment rolls, &c, to clerks to be distributed to assessors.

SEC. 132 The secretary of state shall, from time to time, as he may deem proper, cause to be printed blank assessment rolls, and other forms for proceedings required by this chapter, and shall transmit the same, together with such instructions as he shall think useful, to the several clerks of the boards of supervisors in this state, who shall distribute the same to the several assessors of the towns and wards in their respective counties.

Fees to be allowed to officers and printers for services under the requisitions of this chapter.

SEC. 133. In addition to any fees elsewhere specifically allowed, for services to be performed under the requisitions of this chapter, the following shall be allowed, to wit:

To the clerk of the board of supervisors, for every deed of land sold for taxes, seventy-five cents:

For each additional parcel of land described therein, after the first, five cents:

To the person taking and certifying the acknowledgment of the same, twenty-five cents:

To said clerk, for a certificate of redemption, twenty-five cents:

For each additional parcel of land described therein, after the first, five cents:

To the county treasurer, for a certificate of the sale of lands, twenty-five cents.

For each additional parcel of land described therein, after the first, five cents:

The clerk or treasurer granting such deed or certificate, shall include therein as many parcels of land bid off, owned, or redeemed by any person, as he may desire, and the above fees shall be paid by such person.

To the printer who shall publish any notice of sale for taxes, for each lot or tract, ten cents for all the insertions:

To the printer who shall publish any notice of the time when redemption of lands sold for taxes will expire, for each lot or tract of land, twenty cents for all the insertions:

For drawing affidavit of publication, ten cents:

To the person taking and certifying the same, ten cents.

Fees of publication to be apportioned equally, and all costs to be a lien on land till paid.

The fees of publication shall be apportioned equally upon the several parcels of land advertised, and all costs, charges, and interest, imposed by the provisions of this chapter, and paid upon any land, shall be a lien thereon until paid, equally with the unpaid taxes.

TITLE VI.

Of Highways and Bridges, and of Ferries.

Chapter 16. Of highways and bridges.
17. Of the regulation of ferries.

CHAPTER 16.

OF HIGHWAYS AND BRIDGES.

Section 1. Of the officers entrusted with the care and superintendence of highways and bridges, and their general powers and duties.
19. Of persons liable to work on highways, and making assessments therefor.
29. Of the duties of overseers in regard to the collection and application of highway taxes.
50. Of laying out, altering, and discontinuing highways.
86. Of obstructions to highways, encroachments thereon, and penalties.
98. Of the erection, repairing, and preservation of bridges.

Of the officers entrusted with the care and superintendence of Highways and Bridges, and their general Powers and Duties.

Town supervisors to be commissioners of highways, and their duties as such.

Section 1. The supervisors of the several towns in this state shall, by virtue of their office, be the commissisners of highways in their respective towns, and shall have the care and superintendence of the highways and bridges therein; and it shall be their duty,

1. To give directions for the repairing of the roads and bridges within their respective towns:

2. To regulate the roads already laid out, and to alter such of them as they shall deem inconvenient:

3. To cause such of the roads used as highways as have been laid out, but not sufficiently described, and such as have been lawfully laid out and used as such, up to the present time, but not fully and sufficiently recorded, to be ascertained, described, and entered of record in the town clerk's office:

4. To cause bridges, which are or may be erected over streams intersecting highways, to be kept in repair:

5. To divide their respective towns into so many road districts as they shall judge convenient, and specify every such division in writing under their hands, to be recorded in the office of the town clerk, in a book kept for that purpose; but no such division shall be made within ten days next preceding the annual town meeting:

6. To assign to each of the said road districts such of the inhabitants liable to pay taxes on highways as they shall think pro-

per, having regard to the nearness of residence as much as practicable:

7. To require the overseers of highways, from time to time, and as often as they shall deem necessary, to perform any of the duties required of them by law:

8. To assess the highway taxes in their respective towns, in each year, as provided by law.

Their power to lay out and discontinue roads.

SEC. 2. The supervisors shall have power, in the manner and under the restrictions hereinafter provided, to lay out and establish, upon actual survey, such new roads in their respective towns as they may deem necessary and proper; and to discontinue such old roads as shall appear to them to have become unnecessary.

To make annual report to board of auditors.

SEC. 3. The supervisors of each town shall render to the board of auditors, authorized by law to settle their accounts, at the annual meeting of such board in each year, a statement in writing, containing:

1. The amount of highway taxes assessed, and the amount which has been collected in their town:

2. The amount of tax collected in money, and the amount paid in labor:

3. The manner in which any moneys raised by the town for the improvement or building of roads or bridges therein, have been disbursed, and the particular items of such disbursement; and

4. An estimate of the sum necessary to be raised by the town for the improvement of roads and bridges therein for the ensuing year, specifying the improvements required.

Auditors to present same to town meeting, and meeting may vote to raise money for roads and bridges.

SEC. 4. The said board of auditors shall cause such statement to be presented at the then next annual town meeting, and such meeting may vote for the raising of such sum, for the improvement of the roads and bridges within the town, as a majority of the electors present shall deem necessary; and the sum so voted shall be levied and collected in the same manner as other town taxes.

Duties of overseers of highways.

SEC. 5 It shall be the duty of the overseers of highways:

1. To repair and keep in order the highways within the several districts for which they shall have been elected or appointed respectively:

2. To notify all persons assessed to pay highway taxes, of the time when and place where labor will be received in payment for such taxes:

3. To collect all highway taxes as required by law, and to execute all lawful orders of the supervisors.

Overseers upon application may make another assessment.

SEC. 6. Whenever the amount of highway tax, assessed by the supervisors in any district shall be deemed insufficient to keep the roads therein in repair, the overseer of such highway may, upon an application in writing, signed by a majority of the inhabitants liable to pay highway taxes in such district, make another assessment on the taxable property in said district, in the same proportion and not exceeding one-third of the amount assessed in the same year by the supervisors on the inhabitants of the district; and the taxes so assessed by an overseer, shall be collected and expended in like manner as highway taxes assessed by the supervisors are required to be collected and expended.

Guide posts to be erected.

SEC. 7. The supervisors in each town shall cause guide posts, with proper directions, to be erected at the intersection of all public roads in their town.

Overseers to maintain and keep same in repair.

SEC. 8. It shall be the duty of the overseers of highways in each town, to maintain and keep in repair, at the expense of the town, such guide posts as may have been erected by order of the supervisors, within the limits of the district for which they shall have been respectively elected or appointed.

Scraper and plow to be procured by overseer.

SEC. 9. Any overseer of highways may, if he shall deem it necessary, procure a good and sufficient scraper and plow, or either of them, for the use of his road district, and pay for the same out of the highway taxes by him collected.

Overseer to be paid for excess of his labor over his taxes, but not allowed to commute.

SEC. 10. If any overseer shall be employed more time in executing the several duties enjoined on him in this chapter, than shall be necessary for the payment of his highway tax, he shall be paid for the excess at the rate of one dollar per day, and be allowed to retain the same out of the moneys that may come into his hands on account of highway taxes; but he shall not be allowed to pay his own highway tax in money.

Overseer may enter upon adjoining lands and cut ditches, and upon unimproved lands and dig gravel, &c.

SEC. 11. It shall be lawful for any overseer of highways, or any persons acting under his direction, to enter upon any lands adjoining to or near the highway in his district, to construct such drains or ditches as may be necessary for the improvement or preservation of such highway; and any such overseer, or other persons as aforesaid, may enter upon any unimproved lands adjoining to or near the highway in his district, and gather or dig any stones, gravel or sand, and cut any wood or trees, and take away the same for the purpose of making or improving such highway; but any overseer or other person so entering upon such lands shall carefully avoid doing any unnecessary injury upon the same.

If owner or occupant aggrieved, may have damages appraised.

SEC. 12. If any owner or occupant of lands, so entered upon for any of the purposes mentioned in the preceding section, shall feel himself aggrieved, he may apply to the supervisors of the town, who shall appoint three disinterested electors of such town to appraise the damages; and such electors, being first duly sworn justly and impartially to appraise the damages done upon such lands, shall proceed to estimate the same; and the damages, if any, allowed by them, shall be certified under their hands, and the same shall be audited by the town board, and paid out of the town treasury; said appraisers shall take into consideration the advantage as well as the damages done to said land by reason of any improvement made on said road by such material so taken.

Road impassable immediately to be repaired.

SEC. 13. Whenever any highway shall become impassable, by reason of any casual interruption from the falling of timber, the destruction of any bridge, or the washing away or injury of any part of such highway, it shall be the duty of the overseer of said highway to cause such highway to be put in passable repair as soon as practicable.

Person in such case expending more than his assessment, to be credited therefor on subsequent tax.

SEC. 14. If any person, for the purpose of putting such highway in repair, shall expend in labor, material or money, an amount greater than he is assessed to pay on the highway in such year, such person shall be entitled to receive from the overseer of such district a certificate for the amount of such expenditure above his highway tax, which shall be a good credit and shall be allowed to the holder thereof, on account of any subsequent highway tax assessed in said district.

Supervisors may appoint overseer in case of vacancy.

SEC. 15. If any person chosen to the office of overseer of highways shall refuse to serve, or if his office shall become vacant, the supervisors shall by warrant under their hands appoint some other person in his stead; and the overseer so appointed shall have the same powers, perform the same duties, and be liable to the same penalties as overseers chosen at town meetings.

Appointment to be filed and notice given

SEC. 16. The supervisors making such appointment shall cause such warrant to be forthwith filed in the office of the town clerk, and such clerk shall immediately give notice to the person appointed.

Penalty on overseer for neglect of duty.

SEC. 17. Every overseer of highways who shall refuse or neglect to perform any of the duties required of him by law, or which may be lawfully enjoined upon him by the supervisors of his town, and for the omission of which a penalty is not hereinafter provided, shall, for any such neglect or refusal, forfeit the sum of ten dollars.

Duty of supervisor to prosecute overseer for penalty

SEC. 18. It shall be the duty of the supervisors of each town, whenever any overseer of highways in such town has refused or neglected to perform any of the duties required of him by law, forthwith to prosecute such overseer for the recovery of such penalty.

Of Persons liable to work on Highways and making Assessments therefor.

Supervisors to meet annually to assess highway tax.

SEC. 19. The supervisors in each town shall meet within eighteen days after the annual town meeting, at such time and place in the town as they may agree upon, and proceed then, or at a subsequent meeting, to assess the highway tax in their town for the ensuing year; but the supervisors shall not extend the time for assessing such highway tax beyond the second Monday in May in any year.

Overseer to deliver list of inhabitants liable to pay road taxes to town clerk, and clerk to supervisors.

SEC. 20. Each overseer of highways shall, within sixteen days after his election or appointment, deliver to the town clerk a list, subscribed by him, of the names of all the inhabitants of his road district who are liable to pay taxes on the highways; and the town clerk shall deliver all such lists received by him to the supervisors. If the overseer shall neglect or refuse to deliver such list to the town clerk as aforesaid, the supervisors shall have power to issue a warrant under their hands, directed to any constable in the town, requiring him forthwith to bring such overseer before them, to show cause why said list has not been filed with the town clerk according to law; the constable's fees for such service shall be paid by said delinquent overseer.

Penalty for neglect.

Supervisors to make out lists of names of persons, and statement of property liable for road taxes.

SEC. 21. The supervisors in each town shall make out separate lists of the names of all persons liable to pay highway taxes in each road district in such town, which lists shall also contain a statement of all the taxable personal property, and a description of all lots or parcels of land within each such district, with the value of each lot or parcel set opposite to such description, as the same shall appear on the assessment roll; and if any such lot or tract was not separately described in such roll, then in proportion to the valuation which shall have been affixed to the whole tract of which such lot or parcel forms a part.

How to proceed in making assessment.

SEC. 22. In making an assessment of highway tax, the supervisors shall proceed as follows:

1. Every male inhabitant in each road district, being over the age of twenty-one years, and under the age of fifty years, excepting persons of color, paupers, idiots and lunatics, shall be assessed to pay a poll tax of seventy-five cents:

2. The residue of the highway tax, to an amount of not less than three, nor more than seven mills on the dollar, shall be assessed on the valuation of the real and personal property in each district:

3. The supervisors shall set opposite to each person and corporation, and to each description of taxable property, the amount of tax charged to each respectively.

Town clerk to make duplicate lists; one to be filed, &c.

SEC. 23. The town clerk shall, under the direction of the supervisors, make duplicates of the several lists, which shall be subscribed by them, one of which lists for each road district shall be filed by such clerk, in his office, and the other shall be delivered to the overseer of highways of the district in which the highway labor therein specified is assessed.

SEC. 24. The supervisors shall annex to each such tax list a warrant signed by them, which shall be in substance in the following form:

Tax warrant.

"To A. B., overseer of road district number , in the town of : You are hereby required to collect from the several persons and corporations named in the annexed tax list, and from the owners of the real estate described therein, the taxes set opposite to such persons, corporations and property, within the time limited by law, and to apply the taxes by you collected, and make due returns, as the law requires.

Dated the day of , 18 .

C. D.,
E. F., } Supervisors."
G. H.,

Overseers to add names of persons omitted, &c, to tax list.

SEC. 25. The names of persons left out of any such lists, and who ought to have been included therein, and of new inhabitants who have not in the same year been assessed in some other place for highway taxes, shall be from time to time added to the several lists, and assessed by the overseers on their polls, and in proportion to their taxable property, as others are assessed on such lists by the supervisors, to pay taxes on the highways, subject to an appeal to the supervisors.

Persons working on private roads to be credited.

Private roads may be annexed.

SEC. 26. It shall be the duty of the supervisors of each town, to credit such persons as live on private roads and improve the same, so much, upon their assessment, on account of such improvement as such supervisors may deem necessary to keep such private roads in repair; or they may annex any such private road to some highway district.

Personal tax assessed to occupant of land to be distinguished

SEC. 27. Whenever the occupant of any land not owned by him shall be assessed therefor by the supervisors, they shall distinguish in their assessment list the amount charged upon such from tax on same land assessed to him, &c.

land from the personal tax, if any, of such occupant; but when any such land shall be assessed in the name of the occupant, the owner thereof shall not be assessed during the same year to pay a highway tax on account of such land.

Tenant may recover highway tax paid on land of landlord.

SEC. 28. Whenever a tenant of any land, for a less term than twenty years, shall be assessed to pay a tax on the highways on account of such land, pursuant to the last section, and shall actually pay such tax, he shall be entitled to a deduction from the rent due or to become due from him for such land, equal to the full amount of such tax, or he may recover the same of his landlord in an action for money paid for his benefit, unless otherwise provided by agreement between such tenant and his landlord.

Of the Duties of Overseers in regard to the Collection and Application of Highway Taxes.

When two-thirds of highway taxes to be expended.

SEC. 29. Every overseer of highways shall cause at least two-thirds of the amount of highway tax assessed in his district, to be collected and expended, as the law requires, before the first day of July, and the residue by the first day of November in each year.

Three days notice to work to be given to residents

SEC. 30. It shall be the duty of every overseer of highways, to give at least three days notice to all persons residing in his district, assessed to pay highway taxes therein, either personal, or in writing left at their usual place of abode, of the time when, and the place where, they may appear and pay their highway taxes in labor, and with what implements.

Persons may work or employ substitute

SEC. 31. All persons assessed to pay highway taxes in such district, may appear at such times and places therein, and with such teams and implements as the overseer, in the notice mentioned in the preceding section, may direct, and work in person, or by an able bodied substitute.

Overseer may require persons to furnish tools, teams, &c

SEC. 32. Every overseer of highways may require of all persons offering to pay their highway taxes in labor, to furnish a spade shovel, axe or hoe; and any person offering to pay such tax in labor, and who is the owner of a team, plow, wagon, or cart, or other implement useful for working the highways, may be required by such overseer to furnish such team, plow, wagon, or cart, or other implements, if the assessment of such person on such highway be not less than three dollars.

Seventy-five cents per day allowed, and same for cart, &c.

SEC. 33. Every person intending to pay any highway tax assessed against him, or any part thereof, in labor, and who shall upon the notice required to be given by the overseer, appear and work agreeably to the direction of such overseer, shall be credited on his tax seventy-five cents for every day he shall actually work eight hours on such highway, and seventy-five cents a day for every cart, wagon, plow, scraper, yoke of oxen or span of horses he shall furnish agreeably to the requirement of said overseer.

On neglect of person to work as required, not afterwards entitled to pay in work.

SEC. 34. If any person assessed to pay a highway tax shall neglect to appear and work on the highway at the time and place specified in the notice required to be given by the overseer, unless satisfactory cause shall appear to such overseer, for such neglect, such person shall not thereafter be entitled to pay his highway tax assessed for that year, or any part thereof, in labor.

When person liable to pay tax in money, overseer to collect same.

To call once.

Sec. 35. It shall be the duty of the overseer of highways, whenever any person shall have become liable to pay the highway tax assessed against him in money, as prescribed in the preceding section, to collect such tax; and for that purpose such overseer shall call at least once on the person taxed, or at the place of his residence, if in such district, or the town in which such overseer has been chosen, and demand payment of the taxes charged to such person.

If tax not paid overseer to levy.

Sec. 36. In case such person shall refuse or neglect to pay the tax charged against him, such overseer shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same.

Notice of sale to be given.

Sec. 37. Such overseer shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the time of sale, by advertisement to be posted up in at least three public places in the district or town where such sale shall be made; the sale to be by public auction.

Surplus of sale to be returned.

Sec. 38. If the property levied upon, shall be sold for more than the amount of tax and costs, the surplus shall be returned to the person from whom the property was taken.

Fees of overseer on collections.

Sec. 39. Every overseer shall be entitled to retain five per cent for his fees, out of all moneys collected by him on his warrant, and in case of a levy and sale by him of goods and chattels for the payment of any tax, he shall be entitled to collect and receive from the same, such fees as constables are authorized to receive for levying upon and selling goods under execution.

Overseer may deliver tax list to constable, who may collect same.

Sec. 40. It shall be lawful for any overseer of highways, for the purpose of collecting any unpaid highway taxes on his tax list, against any person or persons who shall have become liable to pay the same in money, to place such tax list in the hands of any constable of the same town in which such overseer shall have been elected; and such constable shall possess the same powers in the collection of such tax, and be entitled to receive the like compensation, as overseers of highways in like cases.

Overseer to designate names of delinquents, and indorse his warrant.

Sec. 41. Whenever any overseer of highways shall place his tax list in the hands of a constable for collection, as provided in the preceding section, he shall designate the persons named therein from whom taxes are due in money, and he shall endorse over his signature, on such tax list, in substance as follows:

"I hereby authorize A. B., [naming the constable,] to collect the unpaid taxes due in money on the within tax list.

Dated, 18 ,

C. D., Overseer."

Duty of constable.

Warrant may be once re-issued to constable.

Sec 42. Every constable who shall receive any such tax list to be collected, shall to the best of his ability collect the sums due in money on such tax list from the persons who ought to pay the same, and shall, within thirty days from the date of such endorsement on said tax list, return to the said overseer his doings thereon, and pay over all moneys so collected to such overseer; and any overseer, if he shall deem it necessary, may once re-issue such warrant and tax list in the manner specified in the preceding section, and when so re-issued, the constable shall proceed thereon as herein above provided.

CHAPTER 16

Moneys collected how to be applied.

SEC. 43. Moneys collected or received by any overseer of highways, on account of highway taxes in his district, shall be faithfully applied and expended by such overseer in the procuring of labor, and in the purchase of implements and materials, as in the opinion of the said overseer, will most benefit the highways and bridges in his district.

When overseer to make return of lands on which taxes are unpaid.

SEC. 44. Every overseer of highways shall, on or before the first Monday in November in each year make out and deliver to the town clerk of his town a statement in writing, containing a description of all the real estate taxed, in his tax list, upon which the taxes remain unpaid, together with the amount of tax assessed to each, such description of land, and the names of the owners thereof, if known; and he shall make and subscribe an affidavit thereon before some justice of the peace, or other person authorized to administer oaths that the taxes mentioned in such statement remain unpaid. If the said overseer shall neglect or refuse to make out and deliver to the town clerk such statement, as aforesaid, the supervisors, or a majority of them shall, upon the application of the town clerk, issue a warrant under their hands to any constable of the town, commanding him forthwith to bring such overseer before them to show cause why such statement has not been made, as the law requires. The constable's fees for such service shall be paid by such delinquent overseer.

Penalty for neglect.

Town clerk to enter unpaid road taxes on assessment roll, &c.

SEC. 45. The town clerk shall, in making out the duplicate assessment roll of the town next thereafter, enter such unpaid taxes therein, opposite to the description of the land upon which the taxes so remain unpaid; and such taxes shall be collected in the same manner as town taxes are collected, and when so collected, shall be paid over as hereinafter provided, for the use of the district in which they were originally assessed.

Town treasurer to notify overseer of road moneys in treasury, &c.

SEC. 46. It shall be the duty of each town treasurer, between the fifteenth and the thirtieth days of April in each year, to notify the overseer of highways of every road district in his town, which may be entitled to any moneys in the town treasury accruing from returned highway taxes in such district, or from any balance received from a former overseer; and the said treasurer shall pay to the order of the overseer of each such road district all moneys in his hands belonging to such district, for the construction and improvement of roads and bridges therein.

When overseer to render account and what to contain.

SEC. 47. Every overseer of highways shall, on or before the third Monday in March in each year render to the supervisors of the town an account in writing, verified by his affidavit subscribed thereon before some person authorized to administer oaths, containing:

1. The names of all persons assessed to pay a highway tax in his district:

2. The amount of tax collected from each such person, and from other sources, distinguishing the taxes which have been paid in labor, from those which have been paid in money:

3. The amount of moneys received from the town treasurer, on account of returned taxes on real estate, or paid into the town treasury by a former overseer in such district:

4. The manner in which all taxes collected and received by him have been disbursed, and the particular items of such disbursement:

5. A statement of the highway taxes assessed upon real estate in his district which remain unpaid.

To pay over unexpended moneys to town treasurer.

Sec. 48. If, upon rendering such account, any moneys shall remain unexpended in the hands of such overseer, he shall immediately pay over the same to the town treasurer.

Town treasurer to sue in case of neglect.

Sec. 49. If any overseer shall neglect or refuse to pay over any money remaining unexpended in his hands, as required in the preceding section, it shall be the duty of the town treasurer forthwith to sue for the same in his name of office, in an action for money had and received to the use of such treasurer; which money, when collected, shall be applied as provided in the forty-sixth section.

Of laying out, altering and discontinuing highways.

Highways may be laid out, altered or discontinued by supervisors on application of six freeholders

Sec. 50. Whenever any six or more freeholders residing in any town shall wish to have a highway laid out, altered or discontinued in such town, they may make application in writing to the supervisors of the town in which they reside for that purpose, and the said supervisors shall proceed to lay out, alter, or discontinue such highway, if in their opinion the public good will thereby be promoted.

Not to be laid through orchard, &c., without consent of owner.

Sec. 51. No public or private road shall be laid out through any orchard or garden, without the consent of the owner thereof, if such orchard have been set out two years or more, or if such garden have been cultivated as such two years or more; nor shall any such road be laid out through any buildings or any fixtures, or erections for the purposes of trade or manufactures, or any yards or enclosures necessary to the use and enjoyment thereof, without the consent of the owner.

When laid through improved lands, damages to be appraised.

Sec. 52. Whenever any highway shall be laid out through any enclosed, improved or cultivated lands, without the consent of the owner thereof, the damage, if any, sustained by such owner in the opening of such highway, shall be appraised and awarded as hereinafter provided.

Notice of application to be made out by supervisors.

Sec. 53. Upon application made to the supervisors for the laying out, altering or discontinuing any highway, they shall make out a notice and fix therein a time and place at which they will meet and decide upon such application; and the applicant shall, at least five days previous to such time, cause such notice to be given to all the occupants of the lands through which such highway may pass, which notice shall be served personally, or by copy left with, or at the usual place of abode of each occupant of such lands; and such notice shall also be posted up in three public places in said town, at least ten days before the time of such meeting of the supervisors; every such notice shall specify, as near as practicable, the highway proposed to be laid out, altered or discontinued, and the several tracts of lands through which the same may pass.

Applicants to serve and post notices, and what same to contain.

Upon proof of service of notice, supervisors to proceed, &c.

Sec. 54. The supervisors, upon being satisfied that the notices required in the preceding section have been duly given, proof of which may be shown by affidavit or otherwise, as they may require, shall proceed to examine personally such highway, and shall hear any reasons that may be offered for or against laying out, altering or discontinuing the same, and shall decide upon the application, as they shall deem proper.

Shall cause survey to be made when necessary, and order to be recorded.

SEC. 55. Whenever the supervisors shall lay out, alter or discontinue any highway, they shall cause an accurate survey thereof to be made when necessary, and they shall make out a description of the highway so laid out, altered or discontinued, and incorporate the same, in an order to be signed by them, and shall cause such order to be filed and recorded in the office of the town clerk, who shall note the time of recording the same in the record.

Damages may be agreed upon to amount of $50 in aggregate upon one road.

SEC. 56. Upon the laying out or altering of any highway, if damages shall be claimed therefor by any owner through whose land the same shall be laid, the amount of such damages may be determined by agreement between the supervisors and such owner; provided the damages thus allowed by the supervisors shall not, in the aggregate, exceed fifty dollars upon any one road so laid out or altered by them; every such agreement shall be reduced to writing, and signed by such owner and the supervisors, and filed in the town clerk's office; and every such agreement, and every release of damages given, shall forever preclude such owner from all further claim for damages.

Owner may apply for jury to assess damages within thirty days.

SEC. 57. If any owner of lands, through which a highway shall be laid out or altered by the supervisors, shall not be satisfied with the sum offered for damages by such supervisors, or if no sum be offered, he may, within thirty days thereafter, apply to a justice of the peace of the same or an adjoining town, for a jury to assess and appraise such damages, which application shall be in writing, describing the premises, and any number of persons claiming damages on account of such highway, may join in such application; the supervisors of such town shall have at least six days' notice of the time and place of such meeting.

All claiming damages may join, and supervisors to have six day's notice.

Bond to be executed by applicant.

SEC. 58. Any person applying for a jury, as mentioned in the preceding section, shall by himself or agent execute to the supervisors of the town, and file with the justice, a bond with one or more sureties, to be approved by such justice, conditioned to pay all costs arising from such appeal and appraisement of damages, provided such jury shall not award a larger amount of damages than were offered by the supervisors of the town; or in case the supervisors shall not have made any offer of damages, then conditioned to pay all such costs if the jury shall not award any damages.

Justice to issue precept for jury, and to whom.

SEC. 59. Upon the filing of such bond, the justice shall issue a precept to some constable of an adjoining town, neither, interested nor of kin to any person through whose land such road is laid, directing him to summon five disinterested freeholders of his town, not of kin to the owner or occupant of such land, to meet at a time and place to be specified in such precept, to appraise the damages sustained by the laying out or altering of such highway.

Jury to be sworn, and to make return of their appraisal

SEC. 60. At the time and place appointed for the appearing of such a jury, they shall be sworn by the justice, justly and impartially to make such appraisal, and shall proceed to view such highway, and hear the statements and proofs of the parties if they deem necessary; and they shall make return of their appraisal to the justice, which shall be certified by such justice, and filed with the town clerk; and if the amount of the appraisal by such jury shall exceed the amount offered by the supervisors, or in case no sum shall have been offered by the supervisors, then, if the jury award any damages, the costs and expenses shall be paid by the town, but if the jury shall not award any damages, or more than was offered, the costs and expenses shall be paid by the applicant.

Who to pay costs.

Fees of jurors and justice.

Sec. 61. Each person duly summoned, who shall attend as a juror, shall be allowed six cents a mile for each mile necessarily travelled from his place of abode to the place of meeting, and fifty cents for his services on such jury; and the justice shall be entitled to one dollar for his fees.

Damages and costs of laying roads when payable by town to be audited and collected.

Sec. 62. All damages consequent upon laying out or altering any highway, as finally settled upon, pursuant to the provisions of this chapter, and all lawful charges against a town for the services of any jury in the assessment of damages, or for the fees of any justice or constable provided for in this chapter, or for the services of any commissioners appointed in the manner herein provided, shall be laid before the town board to be audited, and the amount allowed shall be levied and collected in the same manner as other town charges.

Town line roads to be laid by supervisors of both adjoining towns.

Sec. 63. Whenever it shall be deemed necessary to lay out a highway upon the line between two towns, such highway shall be laid by the supervisors of each of said towns, either upon said line or as near thereto as the situation of the ground will admit; and they may vary the same either to the one side or the other of such line, as they may deem necessary.

Supervisors to determine what portion to be repaired, and what damage to be paid by each.

Sec. 64. The supervisors of each adjoining town, upon laying out a highway upon the line between such towns, shall determine what part of such highway shall be made and kept in repair by each town, and what share of the damages, if any, shall be paid by each.

Supervisors how jointly to proceed, &c.

Sec. 65 The supervisors of each such adjoining town shall proceed in all things as is required of the supervisors of one town in laying out highways in such town; and their proceedings, or a duplicate thereof, shall be returned to the town clerk of each town, and their order, including the survey, shall be recorded in each town clerk's office, and each town shall have all the rights, and be subject to all the liabilities, in relation to the part of such highway to be made or repaired by such town, as if the same were wholly located in such town.

Private roads how laid out.

Sec. 66. Whenever application shall be made by any freeholder whose residence is excluded from the highway, to the supervisors of the town to lay out a private road, the supervisors may lay out such road; and the damages thereof to any owner of the lands through which such road may be laid, shall in like manner be ascertained and determined, and in case of appeal, the like proceedings shall be had thereon, as is provided in this chapter for the laying out and altering of public highways; except that the applicant for such private road shall, in all cases, pay the damages and costs arising from the laying out of such road.

Private road to be for use of applicant, and

Sec. 67. Every such private road, when so laid out, shall be for the use of such applicant, his heirs and assigns, but not to be con-

Owner of land not to use same, &c.

verted to any other purpose than that of a road; nor shall the occupant or owner of the land through which such road shall be laid out, be permitted to use the same as a road, unless he shall have signified his intention of so making use of the same to the supervisors, or the jury, who ascertained the damages sustained by laying out such road, and before such damages were so ascertained.

Person applying for private road, to make and repair fences.

SEC. 68. Whenever any person or persons shall apply for, and obtain according to law, a private road or cartway from his or her dwelling to any public road, and through the lands of others, the person or persons for whose benefit and at whose request such private road or cartway was granted, shall immediately upon the opening thereof, make and keep in good repair all fences required by the opening of such road.

All papers relating to roads to be filed in office of town clerk.

SEC. 69. All applications, certificates and other paper relating to the laying out, altering or discontinuing any public or private road, shall be filed in the office of the town clerk as soon as the supervisors shall have decided thereon.

Public roads to be four rods wide, and private not more than three.

SEC. 70. All public roads to be laid out by the supervisors of the town shall not be less than four rods wide, nor shall any private road be laid more than three rods wide.

No supervisor to act when interested.

SEC. 71. No supervisor shall act as a commissioner of highways in laying out, altering, or discontinuing any public or private road, in which he may be personally interested.

Supervisors may administer oaths.

SEC. 72. The supervisors of the several towns are, by virtue of their offices, authorized to administer any oaths required by the provisions of this chapter.

Person aggrieved by laying out or altering road may appeal in thirty days.

SEC. 73. Any person who shall consider himself aggrieved by any determination of the supervisors of any town, either in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue any highway, may, within thirty days after such determination, appeal therefrom, and apply to a justice of the peace of the town for the appointment of commissioners to whom an appeal from such determination of the supervisors may be taken.

How appeal to be made.

SEC. 74. Every application for an appeal from the determination of the supervisors shall be made in writing, to such justice of the peace, and shall briefly state the grounds upon which it is made, and whether it is brought to reverse entirely the determination of the supervisors, or only to reverse a part thereof; and in the latter case it shall state what part.

Bond to be executed, notice to be issued and served on supervisors, list of freeholders made, &c.

SEC. 75. Upon the filing of such application, and a bond executed to the supervisors of the town, with sufficient sureties, to be approved by the justice, conditioned to pay all costs arising from such appeal, provided the determination of the supervisors in laying out, altering or discontinuing, or refusing to lay out, alter or discontinue such highway, as the case may be, shall not be reversed, such justice shall issue a notice, specifying therein a time and place for the appointment of commissioners, which notice shall be served on one or more of the supervisors, at least six days before such time, and at the time and place so appointed the justice shall make a list of eighteen disinterested freeholders of the county, each party may object to six on such list; and in case none of the supervisors shall be present, the justice shall strike off the names for the supervisors, and out of the number not struck off, the justice shall by lot select three for such commissioners.

Justice to annex a warrant, and what to contain, and commissioners to be sworn.

Sec. 76. The justice shall then annex to the application a warrant under his hand, appointing a time and place for the meeting of such commissioners, and issue the same to the persons so appointed, directing them to view and examine the highway described in the application, and the determination of the supervisors in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue the same, as the case may be, and to make return of their decision thereon to him, within twenty days after the date of the warrant; and before proceeding to make such view and examination, they shall be duly sworn justly and impartially to discharge their duties as such commissioners.

Decision of commissioners to be signed and filed.

Who to pay expense.

Sec. 77. The decision of such commissioners shall be reduced to writing, and signed by them and filed with the town clerk, and if the determination of the supervisors shall be affirmed by the commissioners, the party appealing shall pay the expense of the proceedings had in the matter; but if such determination shall be reversed, then the expense shall be a charge against the town; each of such commissioners shall be entitled to one dollar a day for their services, and the justice shall be entitled to one dollar for his fees.

If decision of supervisors is reversed, how they are to proceed as to road.

Sec. 78. When an appeal shall have been made from the determination of the supervisors, for refusing to lay out, alter or discontinue a highway, and such determination shall be reversed by the commissioners, the supervisors shall proceed to lay out, alter or discontinue such highway, in the same manner, and the proceedings thereon shall be the same, as if they had originally determined to lay out, alter or discontinue such highway.

Fences on enclosed lands, when to be removed.

Sec. 79. Whenever the supervisors shall have laid out or altered any public highway, through any enclosed, cultivated or improved lands, and their determination shall not have been appealed from, they shall give the owner or occupant of such lands notice in writing, to remove his fences, within such time as they shall deem reasonable, not less than thirty days after giving such notice; but no person shall be required to remove such fence between the first day of April and the first day of November in any year; and if such owner or occupant shall not remove his fences within the time required in such notice, the supervisors shall cause such fences to be removed, and shall direct such road to be opened; but if the determination of the supervisors shall have been appealed from, then such notice shall be given after the final decision of such appeal.

All highways not opened and worked within four years to cease.

What roads to be deemed highways, though not recorded.

Sec. 80. Every public highway already laid out, no part of which shall have been opened and worked within four years from the time of its being so laid out, and every such highway hereafter to be laid out, no part of which shall be opened and worked within the like period, shall cease to be considered as a public highway; and all public highways now in use, heretofore laid out and established pursuant to law, and all roads not recorded, which have been used as public highways twenty years or more, and all roads not recorded, which shall hereafter be used ten years or more, shall be deemed public highways.

Discontinued highway to whom to belong

SEC. 81. When any highway shall be discontinued, the same shall belong to the owner or owners of the adjoining lands; if it shall be located between the lands of two or more different owners, it shall be annexed to the lots to which it originally belonged, if that can be ascertained, if not, it shall be equally divided between the owners of the lands on each side thereof.

Value of discontinued highway set to land and benefits of owner from road, to be considered in estimating damages

SEC. 82. If any discontinued highway shall be set to a tract of land through which a new highway shall be laid out, the same may be taken into consideration in estimating the damages sustained by the owner; and in estimating the damages which may be sustained by any person owning or interested in lands, by reason of laying out or altering any highway, the benefits which such person may receive thereby shall be taken into consideration.

United States, territorial and state roads to be opened and worked, &c

When laid through improved lands, how damages to be obtained

SEC. 83. All United States and territorial roads and all state roads which shall hereafter be laid out, shall be opened and worked the same as other highways; and whenever any such state road shall be laid out through enclosed, improved, or cultivated lands, without the consent of the owner, the damages claimed therefor may be determined by agreement between the commissioners authorized to lay out such road and the owner; but the damages thus allowed by the commissioners, shall not, in the aggregate, exceed fifty dollars upon any such road in any one town; or the same proceedings may be had for the appraisal and collection of damages therefor as if such road were laid out under the provisions of this chapter, provided application for a jury to appraise such damages shall be made within thirty days after the return of the commissioners establishing such road, shall have been filed in the office of the clerk of the board of supervisors of the county where such damages are claimed.

Supervisors may alter same within the town, but shall not discontinue them

SEC 84. The supervisors of each town through which any United States, territorial or state road shall pass, may alter the same within the limits of their town, in the same manner they are authorized to alter other highways, but they shall not discontinue or obstruct any such road.

When altered, person aggrieved may appeal to county board of supervisors

County board to hear and determine appeal, and who to pay costs.

SEC. 85. Whenever any road specified in the preceding section shall be altered as therein provided, any person conceiving himself aggrieved by such alteration, may appeal from the decision of such supervisors, within thirty days thereafter, to the county board of supervisors of the same county, upon filing with the town clerk of the proper town a bond, executed to the supervisors of such town, with sufficient sureties, to be approved by such clerk, conditioned to pay all costs arising from such appeal, provided the determination of the town supervisors, in altering such road, shall not be reversed; and the said board shall hear and determine such appeal; and if the determination of the town supervisors shall not be reversed, the appellants shall pay such costs; but if the same shall be reversed, then the town where such road shall be so altered shall pay the same.

Of obstructions to highways, encroachments thereon, and penalties.

Penalty for obstructing highway or ditch.

SEC. 86. Whoever shall wilfully obstruct any highway, or fill up, or place any obstruction in any ditch constructed for draining the water from any highway, shall forfeit for every such offence a sum not exceeding twenty-five dollars; and the overseer of the proper district, shall cause such obstruction immediately to be removed.

Encroachment on highway, proceedings how to remove.

Sec. 87. In every case where a highway shall have been laid out and opened, and the same has been or shall be encroached upon by any fence, building, or other fixture, the supervisors shall make an order, under their hands, requiring the occupant of the land through or by which such highway runs, and to which such fence, building or other fixture shall be appurtenant, to remove the same beyond the limits of such highway within thirty days, and they shall cause a copy of such order to be served upon such occupant; and every such order shall specify the width of the road, the extent of the encroachment, and the place or places in which the same may be, with reasonable certainty.

Penalty for not removing.

Sec. 88. If the fence, building, or other fixture causing such encroachment shall not be removed within thirty days after the service of a copy of such order, such occupant shall forfeit the sum of fifty cents for every day after the expiration of that time, during which such encroachment shall continue.

Proceedings if encroachment is denied.

Sec. 89. If the occupant, upon whom a copy of such order shall be served, shall deny such encroachment, the supervisors or some one of them shall apply to some justice of the peace of the county for a precept, which shall be issued by such justice, directed to any constable of the county, commanding him to summon six disinterested freeholders thereof, to meet at a certain day and place, and not less than four days after the issuing thereof, to inquire into the premises; and the constable to whom such precept shall be directed, shall give at least three days' notice to one of the supervisors of the town, and to the occupant of the land, of the time and place at which such freeholders are to meet.

Jurors and witnesses to be sworn, and talesmen may be summoned.

Sec. 90. On the day specified in the precept, the jury so summoned shall be sworn by such justice well and truly to inquire whether any such encroachment has been made as described in the order of the supervisors, and by whom; and the witnesses produced by either party shall be sworn by the justice, and the jury shall hear the proofs and allegations which may be produced and submitted to them; and in case of any person summoned as a juror shall not appear, or shall be incompetent, his place may be supplied by a talesman as in other cases.

If jury find encroachment has been made, occupant shall remove it.

Sec. 91. If the jury find that any such encroachment has been made by the occupant of the land, or any former occupant thereof, they shall make and subscribe a certificate in writing of the particulars of such encroachment, and by whom made, which shall be filed in the office of the town clerk; and the occupant of the land, whether such encroachment shall have been made by him, or by any former occupant, shall remove the fence, building, or other fixture causing such encroachment within thirty days after the filing of such certificate, under penalty of fifty cents for each day, after the expiration of the time, during which such encroachment shall continue.

If jury find encroachment made, occupant to pay costs.

Sec. 92. If the jury find that any such encroachment has been made as aforesaid, the occupant shall pay the costs of such inquiry, and if the same shall not be paid in ten days, the justice shall issue an execution for the collection thereof, directed to any constable of the county commanding him to levy such costs and his fees thereon, of the goods and chattels of such delinquent, and make return thereof to such justice within thirty days from its date; and the justice, constables, jurors, and witnesses shall be entitled to the same compensation as for other similar services in proceedings before justices of the peace.

Fees of officers and witnesses.

If jury find no encroachment, damages and costs shall be paid by supervisors

SEC. 93. If the jury find that no encroachment has been made, they shall so certify, and shall also ascertain and certify the damages which the then occupant shall have sustained by such proceeding; which damages, together with the costs of the proceedings, shall be paid by the supervisors, and shall be a charge in their favor against the town in which they shall have been elected.

When fences shall be removed under above provisions.

SEC. 94. No person shall be required to remove any fence under the above provisions, except between the first day of November and the first day of April, unless the same shall have been made within three months next before the making of the order for the removal thereof.

Trees fallen from occupied land into highway, by whom to be removed.

SEC. 95. If any tree shall fall or be fallen by any person from any occupied land into any highway, any person may give notice to the occupant of the land from which such tree shall have fallen, to remove the same within twenty-four hours; and if such tree shall not be removed within that time, but shall continue in such highway, such occupant shall forfeit the sum of fifty cents for every day thereafter until such tree shall be removed; but the amount so forfeited shall not exceed ten dollars for one tree.

Penalty for neglect.

Penalty on person who shall fall tree from enclosed land into highway.

SEC. 96. In case any person shall cut down or fall any tree on enclosed land not occupied by him, so that it shall fall into any highway, unless by the order or consent of the occupant, such person shall pay to the occupant of such land the sum of one dollar for every day the same shall remain in such highway, together with all other damages which such occupant may sustain; but the amount so to be recovered shall not exceed twenty dollars for one tree.

Penalty for obstructing navigable rivers, &c.

SEC. 97. Whoever shall obstruct the navigation of any river or stream which now is, or may hereafter be made navigable, by falling any tree therein, or putting into any river or stream declared a public highway, any refuse lumber, slabs, or other waste materials, on conviction thereof shall forfeit the sum of five dollars for any such offence; and shall be further liable for all damages that may accrue on account of such obstruction.

Of the Erection, Repairing and Preservation of Bridges.

County supervisors may raise money for erecting or repairing bridges in towns.

SEC. 98. Whenever it shall appear to the board of supervisors of any county, that any one of the towns in such county would be unreasonably burthened, by erecting or repairing any necessary bridge or bridges in said town, such board of supervisors may cause such sum to be raised and levied upon the county as will be sufficient to defray the expenses of erecting or repairing such bridge or bridges, or such part of such expense as they may deem proper; and such moneys, when collected, shall be paid to the town treasurer of the town in which the same are to be expended, to be applied by the supervisors of such town to the purposes for which the same were raised.

Amount that may be raised.

SEC. 99. No board of supervisors shall, under the provisions of the preceding section, cause any sum exceeding one thousand dollars to be raised and levied in any county in any one year.

Notices of precaution to be posted on bridges by supervisors.

SEC 100 The supervisors of any town may put up and maintain, at the expense of their town, in conspicuous places at each end of any bridge in such town, maintained at public charge, and the length of whose span is not less than twenty-five feet, a notice, with the following words in large characters: "One dollar fine for riding or driving on this bridge faster than a walk."

Fine for riding or driving faster than a walk on bridge.

SEC. 101. Whoever shall ride or drive faster than a walk on any bridge upon which such notice shall have been placed, and shall there be, shall forfeit for every such offence the sum of one dollar.

Forfeiture of treble damages for injury to bridge.

SEC. 102. Whoever shall wilfully injure any bridge maintained at the public charge, shall, for every such offence, forfeit treble damages; and he may be indicted and punished as provided by law.

Miscellaneous Provisions of a General Nature.

Person sustaining damages from insufficiency of bridge, &c., may recover same of town.

SEC. 103. If any damage shall happen to any person, his team, carriage, or other property, by reason of the insufficiency or want of repairs of any bridge, or sluiceway or road in any town in this state, the person sustaining such damages shall have a right to sue for and recover the same against such town, in any court having jurisdiction thereof; and if such damage shall accrue by reason of the insufficiency or want of repairs of a bridge erected or maintained at the expense of two or more towns, the suit shall be brought against all the towns liable for the repairs of the same; and upon recovery of judgment, the damages and costs shall be paid by such towns in the proportion in which they are liable for such repairs; and the court may in its discretion issue execution against each town for its proportion only.

If damage occasioned through neglect of overseer, he shall be liable to town.

SEC. 104. If any such bridge, or sluiceway or road shall have been out of repair in consequence of the neglect or default of the overseer of highways of the district in which the same may be situated, then the town against which any judgment shall have been recovered by reason of such defective bridge or sluiceway or road, may bring an action against such delinquent overseer, and recover the amount of such judgment.

Trees in highway to belong to owner, but may be used to repair road.

SEC. 105. All trees standing or lying on any land over which any highway shall be laid out, shall be for the proper use of the owner of such land, or person otherwise entitled thereto, except such of them as may be requisite to make or repair the highways or bridges on the same land, or within one mile of the same; but no trees reserved for shade or ornament shall be used for such purpose.

Persons may plant trees on side of highways.

SEC. 106. Any person owning or occupying land adjoining any highway may plant or set out trees on each side of said highway contiguous to his land; which trees shall not be set in the highway more than ten feet from the margin thereof; and if any per-

Penalty for injury to same.

son shall cut down, destroy or injure any tree that may have been, or shall be so planted or set out, or which shall have been left on the side of such highway for shade, he shall be liable to treble damages to the owner or occupant of such adjoining land.

Penalty for injuring or removing mile stone or guide board, or defacing inscription thereon.

SEC. 107. Whoever shall wilfully destroy, remove, injure or deface any mile-stone or mile-board erected on any highway, or shall wilfully injure or deface any inscription or device upon any guide-post or guide-board on any highway, or remove, destroy, or injure any such guide-post or guide-board, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding fifty dollars, or imprisoned in the county jail not exceeding three months, in the discretion of the court.

Penalty for injuring roads and bridges.

SEC. 108. Whoever shall injure any highway, by obstructing or diverting any creek, water course or sluiceway, or by drawing logs or timber on the surface of any road or bridge, or by any other act, shall be liable in treble damages, to be recovered by the overseer of highways of the road district within which the injury was done, in his name of office, to be expended by him in the repair of the roads in his district.

Provisions of this chapter to extend to all parts of the state, except, &c.

SEC. 109. The provisions of this chapter relating to highways and bridges shall be construed to extend to all parts of the state, except where special provisions, inconsistent therewith, have been or shall be made by law in relation to particular towns, counties, cities or villages.

CHAPTER 17.

OF THE REGULATION OF FERRIES.

Licences for keeping ferries, by whom granted, and how long.

SECTION 1. The board of supervisors of each of the counties in this state may grant licenses for keeping ferries in their respective counties, to as many suitable persons as they shall think proper; which licenses shall continue in force for a time to be specified therein by said board, not exceeding three years, except where a license is asked for ferries across the St. Croix and Mississippi rivers, on which rivers they may extend the time to ten years.

Rates of ferriage, &c., to be regulated by board.

SEC. 2. Whenever the board of supervisors shall grant a license to keep a ferry, they shall order and direct the rates of ferriage which the person licensed may receive, and may from time to time thereafter, during the continuance of such license, alter such rates, and they may also direct what and how many hours each day such person shall attend his ferry.

Licence not to be granted except to owner of land, unless, &c.

SEC. 3. No license shall be granted to any person to keep a ferry, other than the owner of the land through which the highway adjoining the ferry shall run, unless such owner shall consent thereto in writing, or shall neglect to apply for such license, after notice as hereinafter provided.

If other person apply, notice to be given.

SEC. 4. Whenever application for a license to keep a ferry shall be made by any person other than the owner of the land, the applicant shall make satisfactory proof to the board of supervisors that a notice in writing of his intention to make such application was given to such owner, at least eight days previous to the regular meeting of said board.

Bond to be given and its condition.

SEC. 5. Every person applying for such license, shall, before the same is granted, give a bond to the people of this state, in such penal sum as such board shall direct, with sufficient sureties to be approved by the board, conditioned that he will keep a safe and good boat or boats, in good repair, adapted to the waters where they are to be used, and that he will faithfully attend such ferry with a suitable number of men, during the several hours in each day, and at such several rates of ferriage, as the said board shall order and direct, which bond shall be filed with the clerk of the board of supervisors.

Licence to be entered by clerk, &c.

SEC. 6. Every such license shall be entered by the clerk of the board of supervisors, in a suitable book in his office; and a copy of such license attested by such clerk shall be delivered to the person licensed.

Penalty on keeper of ferry for neglect of duty, or demanding too much ferriage.

SEC. 7. If any person who shall have obtained a license to keep a ferry, shall neglect to perform any of the duties enjoined upon him in this chapter, he shall forfeit and pay for every such offence a sum not exceeding five dollars, to be recovered before any justice of the peace of the proper county, at the suit of any person prosecuting therefor and making due proof of such failure or neglect; and if any keeper of a ferry shall demand or receive a higher rate for ferriage than shall be allowed him by the board of supervisors of the county wherein such ferry is kept, the person so offending shall forfeit and pay for every such offence, a sum not exceeding ten dollars, recoverable before any justice of the peace of the proper county, by any person making due proof thereof.

When waters divide two counties, &c.

SEC. 8. Whenever the waters over which any ferry may be used shall divide two counties, a license obtained in either of the counties shall be sufficient to authorize a person to keep such ferry; and the person keeping such ferry may be prosecuted in either of such counties for a violation of any of the provisions of this chapter.

Penalty for keeping ferry without authority.

SEC. 9. If any person shall keep or use any ferry for transporting persons or property for profit or hire, unless authorised in the manner directed in this chapter, such person shall be subject to a fine not exceeding twenty dollars for each offence.

Clerk to furnish keeper with list of rates of ferriage, same to be posted.

SEC. 10. It shall be the duty of the clerk of the board of supervisors, to furnish to every person to whom a license shall be granted to keep a ferry, a list of the rates of ferriage, which list the keeper of the ferry shall post up at the door of the ferry house, or some conspicuous place near by.

Privileges granted by law not affected by this chapter.

SEC. 11. Nothing contained in this chapter shall affect, or impair, any right or privilege belonging to any individual or corporation by virtue of any law of this state.

TITLE VII.

OF PUBLIC INSTRUCTION, AND THE DISTRIBUTION OF THE INCOME OF SCHOOL FUND.

CHAPTER 18. Of the University of Wisconsin.
19. Of common schools.
20. Of the distribution of the income of the school fund.

CHAPTER 18.

OF THE UNIVERSITY OF WISCONSIN.

Name and site.

SECTION 1. There shall be established in this state, at or near the village of Madison, in the county of Dane, an institution of learning under the name and style of "The University of Wisconsin."

Object.

SEC. 2. The object of the university shall be, to provide the inhabitants of this state with the means of acquiring a thorough knowledge of the various branches of literature, science, and the arts.

Government vested in board of regents.

SEC. 3. The government of the university shall be vested in a board of regents, to consist of a president and twelve members, who shall be elected as hereinafter provided.

How classed and elected.

SEC. 4. The members of the board of regents shall be divided into classes, numbered one, two and three; class numbered one, shall hold their offices for two years; class numbered two, for four years; and class numbered three, for six years, from the first Monday of January, one thousand eight hundred and forty-nine; and biennially thereafter, there shall be elected by the senate and assembly, four members to supply the vacancies made by the provisions of this section, and who shall hold their offices for six years respectively.

Vacancies filled by governor.

SEC. 5. Whenever there shall be a vacancy in the office of regents in the university, from any cause whatever, it shall be the duty of the governor to fill such office by appointment, and the person or persons so appointed shall continue in office until the close of the session of the legislature then next thereafter, and until others are elected in their stead.

Regents to be a body corporate.

SEC. 6. The regents of the university, and their successors in office, shall constitute a body corporate, with the name and style of the "Regents of the University of Wisconsin," with the right, as such, of suing and being sued, of contracting and being contracted with, of making and using a common seal, and altering the same at pleasure.

To appoint certain officers.

Sec. 7. The regents shall appoint a secretary, a treasurer, and a librarian, who shall hold their respective offices during the pleasure of the board: It shall be the duty of the secretary to record all the proceedings of the board, and carefully to preserve all its books and papers; the treasurer shall keep a true and faithful account of all moneys received and paid out by him, and shall give such bonds for the faithful performance of the duties of his office as the regents may require.

Duties of secretary and treasurer.

Shall enact by-laws, elect a chancellor, and appoint professors, &c.

Sec. 8. The regents shall have power, and it shall be their duty, to enact laws for the government of the university; to elect a chancellor, who shall be, *ex officio*, president of the board of regents, or when absent, the board may appoint a president *pro tem.;* they may also appoint the requisite number of professors and tutors, and such other officers as they may deem expedient; also to determine the amount of their respective salaries: Provided, that the salaries thus determined shall be submitted to the legislature for their approval or disapproval.

Departments, their government and power of regents.

Sec. 9. The university shall consist of four departments:

1. The department of science, literature, and the arts:
2. The department of law:
3. The department of medicine:
4. The department of the theory and practice of elementary instruction.

The immediate government of the several departments shall be entrusted to their respective faculties; but the regents shall have power to regulate the course of instruction, and prescribe, under the advice of the professorships, the books and authorities to be used in the several departments, and also to confer such degrees, and grant such diplomas, as are usually conferred and granted by other universities.

May remove officers.

Sec. 10. The regents shall have power to remove any officer connected with the institution, when in their judgment the interests of the institution require it.

Admission and tuition fee, and who entitled to tuition without charge.

Sec. 11. The fee of admission to the university shall never exceed ten dollars, and the charges for tuition in the first and fourth departments, shall never exceed in one year, to the residents of the state, twenty dollars; and, as soon as the income of the university fund will permit, tuition in those departments shall be without charge to all students in the same who are residents of the state.

Site and buildings.

Sec. 12. The regents are authorized to purchase a suitable site for the erection of the university buildings; and proceed to the erection of the same, as soon as they may deem it expedient: provided, that before they make the purchase or proceed to the erection of such buildings, they shall submit a plan of the same to the legislature, which shall be approved by them.

Portion of income to be expended in buildings, &c.

Sec. 13. The regents are authorized to expend such portion of the income of the university fund as they may deem expedient, for the erection of suitable buildings, and the purchase of apparatus, a library, and a cabinet of natural history.

Annual report of regents.

Sec. 14. The regents shall make a report annually to the legislature, at its regular session, exhibiting the state and progress of the university in its several departments, the course of study, the number of professors and students, the amount of expenditures, and such other information as they may deem proper.

Meetings of the board, and quorum.

SEC. 15. Meetings of the board may be called in such manner as the regents shall prescribe, and any seven of them, at a meeting regularly called, shall be a quorum for the transaction of business; and a less number may adjourn from time to time.

Colleges may be received as branches

SEC. 16. The regents, if they shall deem it expedient, may receive into connexion with the university any college in this state, upon application of its board of trustees; and such college, so received, shall become a branch of the university, and be subject to the visitation of the regents.

No religious tenets required of students, professors, &c.

SEC. 17. No religious tenets or opinions shall be required, to entitle any person to be admitted as a student in said university, and no such tenets or opinions shall be required as a qualification for any professor, tutor, or teacher of said university; and no student of said university shall be required to attend religious worship in any particular denomination

Repeal of former act.

SEC. 18. An act entitled "An act to establish a university of the territory of Wisconsin," approved January 19th, 1838, is hereby repealed.

CHAPTER 19.

OF COMMON SCHOOLS.

SECTION 1. Of school districts.
9. Of district meetings.
15. Of district officers and their duties.
16. Of director.
18. Of treasurer.
25. Of clerk.
34. Of the district board.
39. Of school books.
41. Of the town superintendent, and his powers and duties.
53. Of inspection and supervision by town superintendent.
59. Of the formation and alteration of school districts.
66. Of the assessment and collection of school district taxes.
78. Certain duties of town clerk.
80. Of the duties of the clerk of the county board of supervisors.
83. Of libraries.
88. Of suits and judgments against school dirtricts.
94. Of penalties and liabilities.

School Districts.

Notice of formation of, and of time and place of first meeting

SECTION 1. Whenever a school district shall be formed in any town, it shall be the duty of the town superintendent, within twenty days thereafter, to prepare a notice in writing of the formation of such district, describing its boundaries, and appointing a time and place for the first district meeting, and to deliver such notice to a taxable inhabitant of the district.

Notice how served and returned.

SEC. 2. The town superintendent shall, in such notice, direct such inhabitant to notify every qualified voter of the district, either personally, or by leaving a written notice at his place of residence of the time and place of such meeting, at least five days before the time appointed therefor; and it shall be the duty of such inhabitant to notify the voters of such district, agreeably to the requirement of said notice, and endorse thereon a return containing the names of the persons by him notified; and said notice and return shall be recorded as a part of the record of the first meeting in such district.

When new notice may be given by superintendent.

SEC. 3. In case such notice shall not be given, or the inhabitants of the district shall refuse or neglect to assemble, or form a district meeting, when so notified; or in case any school district having been formed and organized, shall afterwards be dissolved, so that no competent authority shall exist therein to call a special district meeting in the manner hereinafter provided, notice shall be given by the town superintendent, and served in the manner prescribed in the preceding section.

Electors to assemble.

SEC. 4. Whenever a district meeting shall be called in the manner prescribed in the preceding sections of this chapter, it shall be the duty of the electors of the district to assemble at the time and place mentioned in such notice.

Who entitled to vote.

SEC. 5. Every male inhabitant of twenty-one years of age or upwards who shall reside in any school district at the time of holding any district meeting therein, shall be entitled to vote at such meeting.

Challenge and proceedings thereon

SEC. 6. If any person offering to vote at a school district meeting, shall be challenged as unqualified, by any legal voter in such district, the chairman presiding at such meeting shall declare to the person challenged the qualifications of a voter, and if such person shall declare that he is a voter, and if such challenge shall not be withdrawn, the chairman shall tender him the following oath or affirmation: "You do solemnly swear or affirm, that you are an actual resident of this school district, and that you are qualified according to law to vote at this meeting." Any person taking such oath or affirmation shall be permitted to vote on all questions proposed at such meeting; but if any person shall refuse to take such oath or affirmation, his vote shall be rejected.

When district deemed organised.

SEC. 7. Every school district shall be deemed duly organized, when any two of the officers elected at the first legal meeting thereof, shall have consented to serve for the offices to which they have been respectively elected, by a written acceptance thereof filed with, and recorded by the clerk; and every school district shall be considered as legally organized after it shall have exercised the franchises and privileges of a district for the term of two years.

Districts to be bodies corporate, and their powers.

SEC. 8. Every school district organized in pursuance of this chapter, or which has been organized under any previous law of the state or territory of Wisconsin, shall be a body corporate, and shall possess the usual powers of a corporation for public purposes, by the name and style of "School District number (such number as shall be designated by the town superintendent in the formation thereof,) of ," (the name of the town or towns in which the district is situate,) and in that name shall sue and be sued, and be capable of contracting and being contracted with, and of holding such real and personal estate as is authorized to be purchased by the provisions of this chapter, and of selling the same.

District Meetings.

Annual meeting, when held

SEC. 9. The annual meeting of each school district shall be held on the last Monday of September in each year; the hour of such meeting shall be two o'clock in the afternoon, unless otherwise provided by the district; special district meetings may be called by the clerk, or in his absence by the director or treasurer, on the written request of any five legal voters of the district.

Special meetings how called

When annual meeting not illegal for want of notice.

SEC. 10. No annual meeting shall be deemed illegal for want of due notice, unless it shall appear that the omission to give such notice was wilful and fraudulent.

Powers of electors when assembled.

SEC. 11. The inhabitants qualified by law to vote at a school district meeting, when assembled at the first meeting in their district, or when lawfully assembled at any other district meeting shall have power,

1. To appoint a chairman for the time being;
2. To adjourn from time to time as occasion may require;
3. To choose a director, treasurer, and clerk, at their first, and at each annual meeting;
4. To designate a site for a district school house;
5. To vote such tax on the taxable property of the district as the meeting shall deem sufficient to purchase or lease a suitable site for a school house, and to build, hire or purchase such school house, and to keep in repair and furnish the same with the necessary fuel and appendages;
6. To vote a tax on the taxable property of the district of such sum as the meeting shall deem proper for the pay of teachers' wages in the district;
7. To authorize and direct the sale of any school house, site, or other property belonging to the district, when the same shall no longer be needful for the use of the district;
8. To impose such tax as may be necessary to discharge any debts or liabilities of the district lawfully incurred;
9. To vote a tax not exceeding twenty dollars in any one year, for the purchase of globes, black-boards, outline maps, or any other apparatus for illustrating the principles of agriculture, chemistry, or the mechanic arts;
10. To give such direction, and make such provision as may be deemed necessary in relation to the prosecution or defence of any suit or proceeding in which the district may be a party or interested;
11. To alter, repeal, and modify their proceedings from time to time, as occasion may require;

When notice of special meetings to be served.

12. No sale of any school house shall be authorized or the site of the same changed, or any tax voted, at any special meeting, unless the notice for such meeting shall be served in the same manner as is provided for the first meeting of a district after its organization.

If election not held at annual meeting, how special meeting called for that purpose.

§ 12. Whenever the time for holding an annual meeting in any district for the election of district officers shall pass without such election being held, the clerk, or in case of his absence, either the director or treasurer last elected, within twenty days after the time of holding such meeting shall have passed, may notify a special meeting for such election in the manner prescribed in the ninth section of this chapter; but if such meeting shall not be notified within twenty days as aforesaid, the town superintendent may order any taxable inhabitant of such district to notify such meeting in the manner provided in this chapter for the formation of a new district; and the officers chosen at such special meeting shall hold their offices until the time for holding the next annual meeting.

Amount that may be raised to build school house.

Sec. 13. No tax to be voted by a district meeting for building, hiring or purchasing a school house shall exceed the sum of three hundred dollars, unless the town superintendent of the town in which the school house is to be situated shall certify in writing his opinion that a larger sum ought to be raised, and shall specify the sum; in which case a sum not exceeding the sum so specified may be raised; and in districts composed of parts of several towns, the certificate of a major part of the superintendents of said towns shall be necessary for such purpose.

What voters may determine at annual meeting.

If they neglect, the board may determine same.

Sec. 14. The qualified voters, at each annual meeting, may determine the length of time a school shall be taught in their district the then ensuing year, which shall not be less than three months, and whether such school shall be taught by a male or female teacher, or both, and whether the school moneys to which the district is entitled from the common school fund and from the town, shall be applied to the support of the summer or winter term of the school, or a certain portion to each, but if such matters shall not be determined at the annual meeting, the district board shall have power, and it shall be their duty to determine the same.

District Officers and their Duties.

Officers of district, and how long to hold office.

Sec. 15. The officers of each school district shall be a director, treasurer, and clerk, who shall hold their respective offices until the annual meeting next following their election or appointment, and until their successors shall have been chosen, but not beyond ten days after the time for holding the second annual meeting after their election or appointment, without being again elected or appointed.

Director.

Duties of director.

Sec. 16. It shall be the duty of the director of each district to sign, together with the clerk all orders drawn by the clerk upon the treasurer of the district for moneys collected, or received by him to be disbursed therein.

Ib.

Sec. 17. The director shall appear for and on behalf of the district, in all suits brought by or against the district, when no other direction shall be given by the qualified voters of such district at a district meeting.

Treasurer.

Duties of treasurer.

Sec. 18. It shall be the duty of the treasurer of each district to collect all taxes assessed in pursuance of the provisions of this chapter, in obedience to the command contained in the warrant annexed to the tax list; he shall also apply for and receive from the town superintendent, all school moneys apportioned to his district, and pay over on the order of the clerk and director of such district, all moneys so collected and received by him.

His annual report.

SEC. 19. The treasurer shall present to the district, at each annual meeting, a report in writing, containing a statement of all moneys received by him during the preceding year, and of the disbursements made by him, with the items of such disbursements, and exhibit the vouchers therefor; also a statement of all taxes assessed upon the taxable property of the district during the year, the purposes for which such taxes were assessed, and the amount assessed for each particular purpose, which report shall be recorded by the clerk; and if it shall appear that any balance of moneys is in the hands of such treasurer at the time of making such report, he shall immediately pay over such balance to his successor in office.

To pay over balance of moneys.

Bond of treasurer.

SEC. 20. The director and clerk shall require of the treasurer, and the treasurer shall execute to the district, a bond in double the amount of money, as near as can be ascertained, to come into his hands as treasurer during the year, with sufficient sureties, to be approved by the director and clerk, conditioned for the faithful discharge of the duties of his office.

Where filed and how prosecuted.

SEC. 21. Such bond shall be filed with the clerk, and in case of any breach of the condition thereof, the director shall cause a suit to be commenced thereon in the name of the district, and the money when collected shall be applied by such director to the use of the district, as the same should have been applied by the treasurer.

When board may appoint treasurer.

SEC. 22. If the treasurer shall fail to give a bond, as is required in this chapter, or from sickness or any other cause, shall be unable to attend to the duty of collecting any district tax, the said board shall appoint a treasurer, who shall possess all the powers of the district treasurer, and shall, before entering upon the duties of his office, give a bond to the district in double the amount of moneys to come into his hands, as near as can be ascertained, in the same manner and with the same effect as the district treasurer is required to give.

When treasurer to prosecute bond of his predecessor.

SEC. 23. If such treasurer shall refuse or neglect to pay over any balance remaining in his hands, it shall be the duty of his successor in office to prosecute without delay, his official bond for the recovery of such balance.

Treasurer liable for moneys lost by his neglect

SEC. 24. If by the neglect of any treasurer, any school moneys shall be lost to any school district, which might have been collected within the time limited in the warrant delivered to him for their collection, he shall forfeit to such district the full amount of the moneys so lost, and shall account for the same to such district in the same manner as if they had been collected

Clerk.

Duties of clerk.

SEC. 25. It shall be the duty of the clerk of each district to record the proceedings of his district in a book, to be provided by the district for that purpose, to enter therein copies of all reports made by him to the town superintendent, and to keep and preserve all records, books and papers belonging to his office, and deliver the same to his successor in office.

If absent from district meeting, electors to appoint clerk.

SEC. 26. He shall be the clerk of the district board, and of all district meetings when present; but if he shall not be present at any district meeting, the qualified voters present may appoint a clerk of such meeting, who shall certify the proceedings thereof, and the same shall be recorded by the clerk of the district.

Clerk to hire teachers, and contract to be in writing, &c.

SEC. 27. The clerk shall contract with and hire qualified teachers for and in the name of the district; which contract shall be in writing, and shall have the consent of either the director or treasurer, or both endorsed thereon, and shall specify the wages per week or month, as agreed upon by the parties, and such contract so completed shall be filed in his office.

District board to furnish school house, &c.

SEC. 28. The district board shall provide the necessary appendages for the school house, and keep the same in good condition and repair, during the time a school shall be taught therein; and they shall keep an accurate account of all expenses incurred by them and present such account for allowance to the qualified voters at a regular district meeting; and the amount of such account as allowed by such meeting may be assessed and collected in the same list with the other district taxes; but no such account shall be allowed at a special district meeting, unless the intention to present the same shall be specified in the notice for such meeting.

Notices of district meetings how to be given, and what to contain.

SEC. 29. It shall be the duty of the clerk to give at least six days previous notice of every annual and special district meeting, by posting up notices therefor in four or more public places in the district; one of which notices shall be affixed to the outer door of the school house, if there be one in the district, and he shall give the like notices for every adjourned district meeting, when such meeting shall have been adjourned for a longer period than one month; every notice for a special district meeting shall specify the objects for which such meeting is called, and no business shall be acted upon at any special meeting which was not specified in such notice.

When annual report of clerk to superintendent to be made.

SEC 30. It shall be the duty of the clerk, between the first and fifteenth days of September, in each year, to make and transmit a report in writing signed by him, to the town superintendent, dated on the first day of September, in the year in which it shall be transmitted, showing:

What to contain.

1. The number of children, male and female, designated separately, residing in the district on the last day of August previous to the date of such report, over the age of four, and under the age of twenty years:

2. The number attending school during the year under the age of four, and the number over the age of twenty years:

3. The whole number that have attended school during the year:

4. The length of time a school has been taught during the year by a qualified teacher, the name of each teacher, the length of time taught by each, and the wages paid to each:

5. The average length of time scholars over the age of four, and under the age of twenty years, have attended school during the year:

6. The amount of moneys received from the town superintendent within the year, and the manner in which the same has been applied:

7. The amount raised by the district in such year, and the purposes for which it was raised:

8. The kinds of books used in the school:

9. Such other facts and statistics in regard to the school, and the subject of education, as the state superintendent may direct.

Clerk to draw orders on the treasurer; same to be countersigned by director.

SEC. 31. It shall be the duty of the clerk to draw orders on the treasurer of the district for moneys in the hands of such treasurer, which have been apportioned to, or raised by the district, to be applied to the payment of teachers' wages, and apply said moneys to the payment of such teachers as shall have been employed by him in the name of the district; and also to draw orders on said treasurer for moneys in his hands, to be disbursed for any other purpose for which the same shall have been voted by the district, agreeably to the provisions of this chapter: *Provided*, said orders shall be signed by the director.

To make out tax lists and warrants.

SEC. 32. It shall be his duty to make out tax lists of all taxes legally authorized by the district, and annex to such tax lists a warrant, under his hand, directed to the treasurer of such district, requiring him to collect the sums therein named.

To furnish teacher with register, and what to contain, &c.

SEC. 33. The clerk shall furnish, under the instruction of the superintendent of public instruction, a suitable school register, in which every teacher in the district shall be required to enter the names, ages and studies of all the scholars attending school, and daily, their attendance, tardiness, and absence; which register shall be deposited with the clerk at the end of each school term; and any teacher who shall wilfully neglect, or refuse to comply with the requirements of this section, shall forfeit his or her wages for teaching in such district.

District Board.

Who to constitute.

SEC. 34. The director, treasurer, and clerk, shall constitute the district board.

Their powers and duties.

SEC. 35. They shall purchase or lease such a site for a school house as shall have been designated by the district, in the corporate name thereof, and shall build, hire, or purchase such school house, out of the funds provided for that purpose, and make sale of any school house, site, or other property belonging to the district, and if necessary execute a conveyance of the same in their name of office, when lawfully directed by the qualified voters of of such district at any annual or special meeting.

To have care of school house, &c.

SEC. 36. The said board shall have the care and keeping of the school house and other property, belonging to the district, except so far as the same shall be specially confided to the care of the clerk, including all books purchased by the district for the use of any children.

When to fill vacancy in their own number,

SEC. 37. The said board shall have power to fill, by appointment, any vacancy that shall occur in their own number, within ten days after such vacancy shall occur; and if such vacancy shall not be filled within ten days as aforesaid by said board, it shall be the duty of the town superintendent to fill such vacancy by appointment.

and when superintendent shall.

When may purchase school books for children.

Sec. 38. The district board may purchase, at the expense of the district, when families or guardians may not be able to furnish the same, such school books as in their judgment may be necessary for the use of any children attending school in their district, and they may include the amount of such purchase in any tax list to be collected in such district.

School Books.

Board may determine what books to be used.

Sec. 39. The board in each school district shall have power, under the advice of the superintendent of public instruction, to determine what school and text books shall be used in the several branches taught in the school of such district.

What shall be taught in district schools.

Sec. 40. In every district school there shall be taught orthography, reading, writing, English grammar, geography and arithmetic, during the time which such school shall be kept, and such other branches of education as may be determined upon by the board.

Town Superintendent and his Powers and Duties.

Superintendent to execute bond.

Sec. 41. It shall be the duty of the town superintendent of common schools, within ten days after he shall have been notified of his election or appointment, to execute to the chairman of supervisors of his town, and file with the town clerk a bond with one or more sufficient sureties, to be approved by the said chairman of supervisors by endorsement over his signature on said bond, with a penalty, as near as can be ascertained, of double the amount of all the school moneys to come into his hands during the term of his office, and conditioned for the faithful application and legal disbursement of all such school moneys according to law, and for the faithful discharge of all the duties of his office; and in case such bond shall not be executed, approved and filed within the time prescribed in this section, the office of such town superintendent shall be deemed vacant.

Penalty of bond, &c.

Duties of superintendent.

Sec. 42. It shall be the duty of the town superintendent in each town:

1. To divide the town into a convenient number of school districts, and to regulate and alter such districts as hereinafter provided:

2. To describe and number the school districts, and to deliver the description thereof and numbers in writing to the town clerk, immediately after the formation or alteration thereof:

3. To apply for and receive from the county treasurer, all moneys apportioned for the use of common schools in his town, and from the treasurer of the town, all moneys raised therein for the same purpose:

4. To apportion the school moneys received from the town and county treasurers, on the first Monday of April in each year, to the several districts and parts of districts within the town, in pro-

portion to the number of children residing in each, over the age of four, and under the age of twenty years, as the same shall have appeared from the last annual reports of their respective clerks:

5. To see that the annual reports of the clerks of the several school districts in his towns are made correctly, and in due time:

6. To sue for and collect, in his name of office, all penalties and forfeitures imposed in this chapter, which shall be incurred by any officer or inhabitant of his town, and in respect to which no other provision is made.

When to report to clerk of board of supervisors

SEC. 43. It shall be the duty of the town superintendent, between the first and fifteenth days of October in each year, to make and transmit to the clerk of the board of supervisors of the county, a report in writing, bearing date on the first day of October in the year of its transmission, stating,

What report to contain.

1. The whole number of school districts separately set off within the town:

2. The districts and parts of districts from which reports shall have been made to him or his immediate predecessor in office, within the time limited for that purpose:

3. The length of time a school shall have been kept in each of such districts or parts of districts, distinguishing what portion of that time the school has been kept by qualified teachers:

4. The amount of public moneys received in each of such districts and parts of districts:

5. The number of children taught in each, and the number of children over the age of four and under the age of twenty years, residing in each:

6. The whole amount of moneys received by him or his predecessor in office, since the date of the last preceding report, distinguishing the amount received from the county treasurer, from the amount received from the town treasurer, and from other sources, if any:

7. The manner in which such moneys have been expended, and whether any, and what part, remains unexpended, and for what cause:

8. The amount of money raised in the districts and paid for teachers' wages, in addition to the public money paid therefor; the amount of taxes raised for purchasing school house sites, for building, hiring, purchasing, repairing, and insuring school houses, for fuel, for district libraries, or for any other purposes allowed by law, in the districts or parts of districts from which reports shall have been received by him, or his predecessor, since the date of the last preceding report; with such other information as the state superintendent may from time to time require.

No apportionment of school moneys to district, unless school taught three months, &c.

SEC. 44. No moneys shall be apportioned to any district or part of district, unless it shall appear, by the report thereof, that a school has been taught therein, for at least three months during the year ending at the date of such report, by a qualified teacher, and that all school moneys received during that year from the school fund, have been applied to the payment of the wages of such teacher; and no portion of the library money shall be apportioned to any district or part of a district, unless it shall appear from the last annual report thereof, that the library money received at the last preceding apportionment, was duly expended according to law, before the first day of September subsequent to such apportionment, and that such district has complied with the regulations established by the state superintendent in respect to district libraries.

When library money not to be apportioned.

SEC. 45. The town superintendent in each town shall keep a just and true account of all school moneys received and expended by him during each year for which he shall have been chosen, and shall lay the same before the board of auditors of town accounts, at the annual meeting of such board in each year.

Superintendent to keep account of moneys received, &c.

SEC. 46. The town superintendent of common schools in each town shall, within ten days after the termination of his office, render to his successor in office a just and true account, in writing, of all school moneys received by him during the preceding year, and of the manner in which the same shall have been appropriated and expended by him; and the accounts so rendered shall be delivered by such successor in office to the town clerk, to be filed and recorded in his office.

To render account to his successor, &c.

SEC. 47. On rendering such account, if any balance shall be found remaining in the hands of such town superintendent, the same shall immediately be paid by him to his successor in office.

To pay over balance.

SEC. 48. Such successor in office shall bring a suit, upon the official bond of any previous town superintendent, for the recovery, with interest, of any unpaid balance of school moneys, that shall appear to have been in his hands on leaving his office, either by the accounts rendered by such town superintendent, or by other sufficient proof.

Successor to bring suit for unpaid balance.

SEC. 49. The town superintendent in each town shall have the powers and privileges of a corporation, so far as to enable him to take and hold any property transferred to him for the use of common schools in such town.

To have the powers of a corporation for certain purposes.

SEC. 50. The town superintendent shall be entitled to receive one dollar per day for every day actually and necessarily devoted by him, in his official capacity, to the service of the town for which he may be chosen, the same to be paid in like manner as other town officers are paid.

His fees.

SEC. 51. If after the time when the annual reports of the school districts are required to be dated, and before the apportionment of school moneys shall be made, a district shall be duly altered, or a new district shall be formed in the town, so as to render an apportionment, founded on such annual reports, unjust as between two or more districts of the town, the town superintendent shall make an apportionment to such districts, according to the number of children in each over the age of four, and under the age of twenty years, ascertaining that number by the best evidence in his power.

How school moneys to be apportioned in certain cases.

SEC. 52. All moneys apportioned by the town superintendent, to any district, or part of a district, which shall have remained in the hands of said town superintendent for one year after such apportionment, by reason of such district, or part of district, neglecting or refusing to receive the same, shall be added to the moneys next thereafter to be apportioned by such town superintendent, to the several districts and parts of districts in such town, and apportioned therewith.

School moneys apportioned and not drawn within one year, to be added to those next to be apportioned.

CHAPTER 19.

Of Inspection and Supervision by Town Superintendent.

Superintendent to examine teachers, &c.

SEC. 53. It shall be the duty of the town superintendent to examine annually all persons offering themselves as candidates for teachers of common schools in his town, in regard to moral character, learning, and ability to teach school; and he shall deliver to each person examined and found qualified, a certificate signed by him in such form as shall be prescribed by the state superintendent; which certificate shall be in force for one year from the date thereof, unless annulled within that time, and no person shall be deemed a qualified teacher within the meaning of this chapter who has not such a certificate in force.

May annul certificate

SEC. 54. The town superintendent may annul any such certificate, given by him or his predecessor in office, when he shall think proper, giving at least ten days previous notice, in writing, to the teacher holding it, and to the district board of the district in which he may be employed, of his intention to annul the same.

Note to be made and filed.

SEC. 55. The annulling of a certificate shall not disqualify the teacher to whom it was given, until a note containing the name of the teacher, and the time when his certificate was annulled, shall be made by the town superintendent, and filed in the office of the town clerk.

Re-examination, when may be

SEC. 56. The town superintendent, whenever he shall deem it necessary, may require a re-examination of all or any of the teachers in his town, for the purpose of ascertaining their qualifications to continue as such teachers.

To visit schools.

SEC. 57. It shall be the duty of the town superintendent to visit all such common schools.

His duties as visitor.

SEC. 58. At such visitation, the town superintendent shall examine into the state and condition of such schools, both as respects the progress of the scholars in learning, and the good order of the schools, and may give his advice and direction to the board of directors, and the teachers of such schools as to the government thereof and the course of studies to be pursued therein.

Of the formation and alteration of school districts.

School districts by whom formed

SEC. 59. In the formation or alteration of a school district, the board of directors of any district to be affected thereby, may apply to the chairman of the board of town supervisors and town clerk, to be associated with the town superintendent; and their action shall be final, unless duly appealed from.

Alteration in school district when to take effect.

SEC. 60. No alteration of any school district, made without the consent of the district board thereof, shall take effect until three months after notice in writing shall be given by the town superintendent to some one or more of such district board; nor shall any alteration of an organized school district be made to take effect between the first day of December, in any one year, and the first day of April following.

When new district formed property to be divided.

SEC 61. When a new district is formed, in whole or in part, from one or more districts possessed of a school house, or entitled to other property, the town superintendent, at the time of forming such new district, shall ascertain and determine the proportion of the value of the school house and other property justly due to such new district.

How division made.

SEC. 62. Such proportion shall be ascertained and determined, according to the value of the taxable property of the respective parts of such former district, at the time of the division, by the best evidence in the power of the town superintendent; and such amount of any debt due from the former district, which would have been a charge upon the new had it remained in the former district, shall be deducted from such proportion.

Sum to be raised, how collected and applied, &c.

SEC. 63. Such proportion, when ascertained, shall be raised and collected, with fees for collection, by the district board of the district retaining the school house or other property of the former district, upon the taxable property of their district, in the same manner as if the same had been authorized by a vote of their district for the building of a school house, and when collected, shall be paid to the treasurer of the new district, to be applied towards procuring a school house for such district; and the money so paid to the new district, shall be allowed to the credit of the taxable property taken from the former district, in reduction of any tax that may be imposed on said taxable property, in the new district, for the building of a school house.

Formation of districts from two or more towns, and alteration of same.

SEC. 64. Whenever it shall be necessary to form a district from two or more adjoining towns, the superintendents of such adjoining towns shall meet together, and form such district, and deliver the notice of such formation to a taxable inhabitant of such district, whose duty it shall be to serve such notice as provided in the second section of this chapter, and the clerk of the district so formed shall make such report to the superintendent of each such adjoining town, of such part of said district as may be situate in such town, as is prescribed in the thirtieth section of this chapter; and any district so formed may be altered or regulated by the superintendents of such adjoining towns as may be deemed necessary.

Appeals to state superintendent from all decisions under this chapter.

SEC. 65. Any person conceiving himself aggrieved in consequence of any decision made by any school district meeting, or by the town superintendent, in forming or altering, or refusing to form or alter any school district, or concerning any other matter under the provisions of this chapter, may appeal to the state superintendent, who is hereby authorized and required to examine and decide the same, and such decision shall be final and conclusive; provided, however, that the decision appealed from shall be operative until the state superintendent shall reverse or change the same.

Of the Assessment and Collection of School District Taxes.

On what property district taxes to be assessed.

SEC. 66. All taxes raised and collected in any school district, for any of the purposes authorized by the provisions of this chapter, except when otherwise provided, shall be assessed on the same kind of property as taxes for town and county purposes are assessed.

Tax list how made out.

SEC. 67. The clerk of each school district, in making out any tax list, shall enter therein the names of all persons liable to pay a school district tax in such district, the amount of personal pro-

CHAPTER 19.

perty to be taxed to each such person, and a description of all the taxable real estate in such district, and he shall set opposite to each description of taxable property the valuation of the same and the amount of tax charged upon such property, and to each person respectively; such description and valuation of taxable property shall be ascertained, so far as possible, from the last assessment roll of the town.

How real estate valued in certain cases.

SEC. 68. Whenever any real estate in any school district shall not have been separately valued in the assessment roll of the town, and the valuation of such real estate cannot be definitely ascertained from such assessment roll, the district board of such district shall estimate the value of the same, in proportion to the valuation affixed in said assessment roll to the whole tract of which such lot or piece of land forms a part.

Equalization of valuations in districts embracing parts of two or more towns.

SEC. 69. Whenever a school district embraces a part of more than one town, the town superintendents of the towns so in part embraced, upon application of any three persons liable to pay taxes in such district, shall proceed to inquire and determine whether the valuations of taxable property in the assessment rolls of such towns are just, as compared with each other, in respect to such district, and if considered not to be so, they shall determine the relative proportion of taxes to be assessed upon the real estate of the parts of such district so lying in different towns; and any tax thereafter to be raised in such district, shall be apportioned and assessed according to such determination, until the same shall be altered upon a like application and determination as before mentioned; and in cases where two superintendents cannot agree as to such valuation, they shall summon a superintendent from an adjoining town, who shall unite in such inquiry and determination.

Tax warrant how issued and what to contain.

SEC. 70. The warrant annexed to any tax list shall be under the hand of the clerk of the district, and shall command the treasurer of such district to collect from each of the taxable persons and corporations named in such tax list, and of the owners of the real estate described therein, the several sums set opposite to the persons and corporations so named, and to the several tracts of land so described, within forty days from the date thereof, and within ten days from the date of such warrant, to personally demand such tax of the persons charged therewith in such lists, if they be found within his town; and that if any such tax shall not be paid within said ten days, to collect the same by distress and sale of personal property, in the same manner as town treasurers are authorized to collect town and county taxes; and the said treasurer shall execute said warrant, and return the same to the clerk, at the expiration of the time limited therein for the collection of such tax list.

Return of delinquent lands how made.

SEC. 71. If any tax on real estate, in any tax list delivered to the treasurer of any district, shall remain unpaid at the time he is required by law to return his warrant to the clerk of the district, such treasurer shall make out and deliver to the town clerk of his town, a statement in writing, containing a description of the lots and pieces of land upon which such taxes remain so unpaid, together with the amount of tax assessed to each; and he shall make and subscribe an affidavit to such statement, before some justice of the peace, or other person authorized to administer oaths, that the taxes mentioned in such statement remain unpaid, and that after diligent efforts he has been unable to collect the same; and whenever any school district shall embrace parts of more than one town, such treasurer shall make his return, as aforesaid, to the town clerks of the towns in which such parts of such district shall be situated.

Town clerk to give treasurer a certificate.

SEC. 72. The town clerk, upon delivery to him of such statement, shall give a certificate to the treasurer of the amount of taxes so remaining unpaid, as the same shall appear from the statement of such treasurer; which certificate shall be deposited by the treasurer with the district clerk, and shall be filed by such clerk.

Unpaid taxes to be entered in town assessment roll, and collected, &c.

SEC. 73. Such town clerk shall, in making out the duplicate assessment roll of the town next thereafter, enter such unpaid taxes in a separate column therein, opposite to the description of the land upon which the taxes so remain unpaid; and such taxes shall be collected in the same manner as town and county taxes are collected, and when so collected, shall be paid over to the town superintendent of such town, who shall pay the same to the treasurer of the district in which such taxes were originally assessed.

Warrant for collection of district tax, where may be executed, and powers of treasurer.

SEC. 74. The warrant issued by the clerk of any school district for the collection of any district tax authorized to be raised and collected by any of the provisions of this chapter, may be executed in any other district or town in the same county, or in any other county in which any part of such district is situate, when the district is composed of parts of two or more adjoining counties, and such warrant shall have the like force and effect as a warrant issued by a town clerk for the collection of town and county taxes; and the treasurer of the district, to whom any such warrant may be delivered, for the collection of a tax list, shall possess the like powers in the execution of the same as are conferred by law upon the treasurers of towns in the collection of town and county taxes.

Errors in tax list may be corrected by board.

SEC. 75. Whenever any error shall be discovered in any district tax list, and made to appear to the district board, they may order any moneys which may have been improperly collected on such tax list, to be refunded, and may authorize and empower the clerk to amend and correct such error in said tax list.

How warrant renewed.

SEC. 76. Whenever the clerk of any district shall deem it necessary he may renew the warrant annexed to any tax list in his district for thirty days, but he shall have power to renew such warrant but once, without the consent of the superintendent of the town in which the school house of such district shall be located, which consent shall be endorsed on such warrant.

When tenant paying tax, may recover same of owner.

SEC. 77. When any district tax shall be lawfully assessed and paid by any person, on account of any real property, whereof he is only a tenant at will, or for any period not exceeding three years, such tenant may charge and collect of the owner of such real estate the amount of the tax so paid by him, unless some agreement to the contrary shall have been made by such tenant.

CHAPTER 19.

Certain Duties of Town Clerk.

Town clerk to deliver to each district annually description of taxable property therein.

SEC. 78. It shall be the duty of the town clerk of each town, as soon as the annual assessment roll in such town shall be completed in each year, to make, for each district and part of district in such town, a description of all the taxable property therein, with the valuations affixed thereto, as the same shall appear in said last assessment roll; which shall be certified by him, and delivered to the clerk of each such district and part of district, when applied for by such clerk.

Other duties of clerk.

SEC. 79. It shall be his duty to receive and keep all reports made to the town superintendent, from clerks of school districts: and all books, maps and papers, belonging to the town superintendent, when required, and file them in his office; and he shall record, in a book kept for that purpose, such description of school districts, and organization, or alteration thereof, as shall be transmitted to his office by the town superintendent.

Of the Duties of the Clerk of the County Board of Supervisors.

Certain duties of clerk of board of supervisors.

SEC. 80. It shall be the duty of the clerk of the county board of supervisors in each county, to receive all documents transmitted to him by the town superintendents of the several towns in his county, and all communications directed to him by the state superintendent, and keep the same in his office, or dispose of the same as directed by said state superintendent.

To make annual report to state superintendent.

SEC. 81. The said clerk shall, on or before the tenth day of November in each year, make and transmit to the state superintendent a report in writing, setting forth the whole number of towns in his county, distinguishing those from which the required reports have been made to him by the town superintendents, and containing an abstract of their reports.

To deliver written statement to county treasurer annually.

SEC. 82. He shall also, within the time mentioned in the preceding section, make and deliver to the county treasurer, a written statement of the whole number of children in each town in the county, over the age of four, and under the age of twenty years, as shown by the town superintendents' reports; and the board of supervisors of each county shall allow to the clerk thereof such compensation as they may deem reasonable, for the services required of him by the provisions of this chapter.

Libraries.

When appropriation from income of school fund to be made for district libraries.

SEC. 83. So soon as the total annual income of the school fund of this state shall amount to a sum equal to or exceeding the sum of thirty thousand dollars, it shall be the duty of the superintendents of the several towns to appropriate and distribute annually ten per cent of all moneys received by their respective towns, to the several districts in such towns, to be applied by such districts to the purchase of school district libraries, which shall be the property of such districts, and the parents and guardians of all the children therein between the ages of four and twenty years, shall be permitted to use books from such library without charge, being responsible to the district for the safe return thereof, and for any

Who may use books, &c.

injury done thereto, according to such rules and regulations as may be established by the state superintendent.

How tax may be raised for district library.

SEC. 84. The taxable inhabitants of each school district shall have power, when lawfully assembled at any district meeting, to vote a tax on the district, not exceeding thirty dollars in any one year, for a district library, consisting of such books as they may direct their district board, or any other person, at such district meeting, to purchase; and such further sum as they may deem necessary for the purchase of a book case; the intention to propose such tax shall be stated in the notice required to be given of such meeting.

Librarian

SEC. 85. The clerk of the district, or such other person as the taxable inhabitants may at any regular meeting appoint by a majority of votes, shall be the librarian of the district, and shall have the care and custody of the district library.

District board may maintain suits for books, fines, &c.

SEC. 86. Every school district library, and the appurtenances thereunto belonging, shall be deemed to be vested in the district board of the district, so as to enable them to maintain any action for the same, or the value thereof, or for the recovery of any fine or penalty for damage done to any book or books, or neglect to return, or loss of the same, and all such fines and penalties, incurred in consequence of a violation of any regulation lawfully established in respect to district libraries, shall be sued for and collected in the name of such district board, and when so collected shall be applied for the benefit of such district library.

Union libraries.

SEC. 87. The legal voters in any two or more adjoining districts may, in such cases as may be approved by the town superintendent, unite their libraries, and also their library moneys, as they shall be collected or received, and purchase a joint library for such districts, which shall be selected by the district boards thereof, or by such persons as they shall designate, and shall be under the charge of a librarian to be appointed by the district boards of such districts, and the provisions of this chapter shall be applicable to such joint libraries, except that the property in them, and their appurtenances, shall be deemed vested in all the district boards, for the time being, of the districts so united; and in case any such district shall desire to divide such library, such division shall be made by the directors of the districts whose libraries are so united, and in case they cannot agree, then such division shall be made by the town superintendent.

Of suits and judgments against school districts.

When justices may have jurisdiction where school district interested.

Suits against districts how commenced, &c.

SEC. 88. Justices of the peace shall have jurisdiction in all cases in which a school district is a party interested, when the amount claimed by the plaintiff shall not exceed one hundred dollars, and the parties shall have the same right of appeal as in other cases; and when a suit shall be brought against any school district, it shall be commenced by a summons, a copy of which shall be left with the director of such district.

Judgments against districts how collected.

SEC. 89. No execution shall issue on any judgment against a school district, nor shall any suit be brought thereon; but the same shall be collected in the manner prescribed in this chapter.

How such judgments to be certified

Sec. 90. Whenever any final judgment shall be obtained against any school district, if the same shall not be removed to any other court, the director of such district shall certify to the town clerk of the town, the date and amount of such judgment, with the name of the party in whose favor the same was rendered; and if such judgment shall be removed to another court, the director shall certify the same as aforesaid, immediately after the final determination thereof against the district.

Ib

Sec. 91. If the director shall fail to certify such judgment, as required in the preceding section, it shall be lawful for the party obtaining the same, his agent, or legal representatives, to file with the town clerk of the town, the certificate of the justice or clerk of the court rendering the judgment, showing the facts which should have been certified by such director.

Ib

Sec. 92. If the district against which any such judgment shall be rendered is situate in part of two or more towns, a certificate thereof shall be delivered as aforesaid to the town clerk of each town in which such district is in part situated.

Judgment to be assessed by town clerk on taxable property of district, &c.

Sec. 93. The town clerk receiving either of the certificates of a judgment as aforesaid, shall proceed to assess the amount thereof, with interest from the date of such judgment to the time when the warrant for the collection thereof will expire, upon the taxable property of said district, placing the same on the next town assessment roll, in a separate column; and the same proceedings shall be had thereon, and the same shall be collected and returned, in the same manner as other town taxes, and shall be paid to the party entitled thereto.

Penalties and Liabilities.

Penalty for neglect to serve notices, and to act as chairman.

Sec. 94. Every taxable inhabitant, receiving the notice mentioned in the first and second sections of this chapter, who shall neglect or refuse duly to serve and return said notice, and every chairman of the first district meeting in any district, who shall wilfully neglect or refuse to perform the duties enjoined on him in this chapter, shall respectively forfeit the sum of five dollars.

Same for neglect to serve as district officer, &c

Sec. 95. Every person duly elected to the office of director, treasurer, or clerk of any school district, who shall neglect or refuse, without sufficient cause, to accept of such office, and serve therein, or who, having entered upon the duties of his office, shall neglect or refuse to perform any duty required of him by the provisions of this chapter, shall forfeit the sum of ten dollars.

Same on superintendent for neglect to make his annual report to clerk of supervisors.

Sec. 96. Every town superintendent, who shall neglect or refuse to make and deliver to the clerk of the county board of supervisors his annual report, as required in this chapter, within the time limited therefor, shall be liable to pay the full amount of money lost by such neglect or refusal, with interest thereon, to be recovered by the town treasurer in the name of the town.

Same on clerk of board for neglect to make his report to state superintendent.

Sec. 97. Every clerk of the county board of supervisors, who shall neglect or refuse to make the report required in this chapter to be made by him to the state superintendent, within the time therefor limited, shall be liable to pay to each town the full amount which such town, or any school district therein, shall lose by such neglect or refusal, with interest thereon, to be recovered in the manner specified in the preceding section.

How certain penalties to be applied

SEC. 98. All moneys collected or received by any town treasurer, under the provisions of either of the last two preceding sections, shall be apportioned and distributed to the school districts entitled thereto, in the same manner and in the same proportion that the moneys lost by any neglect or refusal therein mentioned would, according to the provisions of this chapter, have been apportioned and distributed.

Penalty on clerk of district for making false report.

SEC. 99. Every clerk of a district who shall wilfully sign a false report to the town superintendent of his town, with intent of causing such town superintendent to apportion to his district a larger sum than its just proportion of school moneys of the town, shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding six months.

Same for not delivering books, &c., to his successor.

SEC. 100. Every school district clerk who shall neglect or refuse to deliver to his successor in office all records, books and papers appertaining to such office shall be subject to a fine not exceeding fifty dollars.

CHAPTER 20.

OF THE DISTRIBUTION OF THE INCOME OF THE SCHOOL FUND.

Distribution when and how made.

SECTION 1. The income of the state fund for the support of common schools shall be distributed annually on the tenth day of February in each year, or as soon thereafter as practicable, among the several counties in this state from which reports have been received by the state superintendent, agreeably to law.

County treasurer when to apply for school moneys.

SEC. 2. The treasurer of each county shall apply for and receive of the state treasurer the school moneys apportioned to his county, as soon as the same shall become payable.

To give notice of amount received for each town and city, &c.

SEC. 3. Each county treasurer receiving such moneys shall immediately give notice in writing to the treasurer of each city, and to the town superintendent of each town in his county, of the amount apportioned to such town or city, and shall hold the same subject to the order of such city treasurer or town superintendent.

When moneys remaining with treasurer to be added to moneys next received.

SEC. 4. In case the treasurer of any such city, or the town superintendent of any such town, shall not apply for and receive such moneys before the next receipt of school moneys apportioned to the county, the moneys so remaining with the county treasurer shall be added to the moneys next received by him from the state superintendent, and distributed therewith, and in the same propro-tion among the several towns and cities, entitled thereto in such county.

When school moneys not to be apportioned to counties.

SEC. 5. Whenever it shall not appear from the certified statement of the clerk of the board of supervisors in any county, made to the state superintendent, that the amount required by law to be raised for school purposes, has been directed to be raised during the year, by the board of supervisors of such county, the superintendent shall not apportion any of the state school funds to such county, and in such case the moneys so withheld shall be added to the principal of the common school fund.

TITLE VIII.

OF THE PUBLIC PRINTING; OF THE PUBLIC PROPERTY; AND OF THE SCHOOL AND UNIVERSITY LANDS.

CHAPTER 21. Of the public printing.
22. Of the publication of legal decisions.
23. Of the management of the public property.
24. Of the school and university lands, the sale and superintendence thereof, and the powers and duties of the commissioners of said lands.

CHAPTER 21.

OF THE PUBLIC PRINTING.

When secretary of state to advertise for public printing.

SECTION 1. The secretary of state is hereby authorized and required, within two weeks of the close of every regular session of the legislature, to advertise, for four weeks successively, in four different newspapers, published in different sections of the state, for sealed proposals for doing the printing of the legislature and the several state departments, in the English language. Said advertisement shall divide the printing required, into three classes, as follows: first, the incidental printing, comprising the printing incident to the business of the two houses; second, the journals of the two houses, and the laws; third, the printing of the several state departments; each class to be a separate job, and provided for by a separate contract. The said advertisement shall provide for reserving to the legislature the right of dispensing with any portion of such printing; and shall require specifications in the bids, as follows: for the first class, the price of composition per thousand ems, the price of the paper, specifying the size thereof, and the price of press work; for the second class, specifications as above, with the cost of folding, stitching and binding, for each copy of the work required, and for preparing side notes and index for the laws, and index for journals; and for the third class, the price per quire, of the requisite blanks; and it shall be incumbent upon the secretary of state aforesaid, to keep in his office, for inspection, a specimen of the character, style and quality of the work required in the several classes, or to communicate to distant bidders, when requested, as near as may be, the character in the several respects mentioned of the work required. Said proposals shall be endorsed on the outside as "proprosals for the incidental printing;" "for the printing of the journals and the laws," or "for the printing of the state departments," as the case may be, and shall be received at the secretary's office, at the seat of gov-

What advertisement to contain.

Proposals.

ernment; and the day and time of day at which such proposals shall cease to be received shall be specified: Provided, that the time of receiving such proposals, shall in all cases cease within a time at least six weeks previous to the commencement of the next succeeding regular session of the legislature: and provided further, that the said sealed proposals shall remain sealed until the hour appointed for examining the same.

Printing to be let to lowest bidder, and bond to be executed.

SEC. 2. Immediately on the expiration of the time for receiving said proposals, they shall be opened by the secretary of state aforesaid, in the presence of the treasurer of the state, and of such of the bidders as may choose to be present, and the secretary of state aforesaid shall thereupon let each class of printing to the lowest bidder, and he shall, immediately after such letting, notify the successful bidder of his appointment to do the work, and it shall be the duty of the person so appointed, within four weeks of his appointment, to execute to the state a bond in the sum of four thousand dollars, conditioned for the faithful performance of the duties assigned him, which bond shall be approved by the governor, and deposited in the secretary's office; and in case of failure on the part of the person so appointed, to execute said bond as aforesaid, then the next lowest bidder shall be awarded the contract, who shall execute a bond as aforesaid: Provided, that no bid shall be considered unless accompanied by a guarantee, sufficient in amount, that the person bidding will, if successful, fulfil his contract; and in case of failure on the part of any person to whom a contract may be awarded to fulfil his duties under such award, he shall be responsible on his guarantee for all additional cost which may accrue to the state in consequence of such failure.

No bid to be received unless accompanied with a guarantee.

A committee on printing to be appointed by the senate and assembly at every session.

SEC. 3. A committee consisting of two members of the senate and three members of the assembly, shall at the commencement of every session be appointed by their respective houses, which shall constitute a committee on printing, who shall have power to examine the bids on file in the office of the secretary aforesaid, and to investigate matters generally with reference to the printing, to adopt such measures as may be deemed necessary to remedy any default on the part of the secretary in his duties, or any neglect or delay on the part of the contractor to execute the work ordered by the two houses, and to make a pro rata reduction in the compensation allowed, or to refuse the work altogether should it be inferior to the standard, or delayed in the execution, subject, however, to the action of the legislature; and in all cases, the contractor, and his sureties, shall be responsible for any increased expenditure consequent upon the non-performance of his contract. The committee shall audit and pass upon all accounts for printing, but no bill shall be acted upon for work that is not actually executed and delivered, and which they may require to be properly authenticated, and when any documents of a general character are ordered by either house, the matter shall be referred to the committee, and in no case shall the composition of a document ordered by both houses be paid for more than once.

Their powers and duties.

Composition of same document to be paid for but once.

The person to whom printing is awarded to do the same.

SEC. 4. After the execution and acceptance of the bond of security, the person to whom the printing has been awarded shall be the person to do said work for the term for which he was chosen, and no account from any other person for printing, shall be considered or allowed: Provided, that the legislature may annul any contract for incidental printing, for any unreasonable delay in the execution of the work, or for doing it in an inferior or improper manner: and provided further, that the liability of any security shall not be affected thereby.

No account from any other person allowed.

When legislature may annul contract for incidental printing.

Sec. 5. It shall be the duty of the secretary of state, within one week after the passage of any law or joint resolution, to furnish to the person appointed to print the laws, a correct copy of the same: and it shall be the duty of the person so appointed, to furnish within four weeks after the close of any session of the legislature, to the secretary of state, at his office, the prescribed number of copies of the laws, completed according to the contract; and it shall be the duty of the chief clerk of each house, or such other officer as the legislature may direct, to furnish to the printer appointed to do the work, within ten days after the close of each session, a correct copy of the journals of their respective houses, and the printer aforesaid shall furnish at the office of the secretary aforesaid, within three months after the close of such session, the prescribed number of journals, completed according to contract.

Secretary of state to furnish printer with copy of laws.

When printer to print same.

Chief clerk of each house to furnish printer with copy of journals.

When printer to print same.

Sec. 6. The term of service of the printer to whom has been awarded a contract for work shall commence with the session of the legislature next holden after such award, and shall continue for one year, or until the commencement of the next regular session thereafter.

Term of service of printer.

CHAPTER 22.

OF THE PUBLICATION OF LEGAL DECISIONS.

Section 1. The reporter appointed, or hereafter to be appointed by the supreme court, may annually cause the reports of all the cases decided by said court to be published and well bound, in one volume; and the said reporter shall be entitled to the copy-right of the same.

Reporter of supreme court entitled to copyright of reports.

Sec. 2. The state of Wisconsin does hereby agree with said reporter, to purchase of him one hundred volumes of each year's reports, at the price of three dollars per volume, to be distributed as follows, to wit: one volume to each of the several states of the United States, one volume to each of our judges, and to be handed over to their successors in office, and the remainder to be deposited in the state library, to be disposed of according to law.

State to purchase 100 volumes, and how to dispose of same.

Sec. 3. Any reporter, who may have been duly appointed to said office, may avail himself of the offers herein made, by executing to the governor, for the use of the state of Wisconsin, a bond with two sufficient sureties, to be approved by him, in the penal sum of two thousand dollars, conditioned, within a reasonable time after the decisions of any year shall be made, to be specified in said bond, to cause said decisions to be reported, published, and bound, in good workmanlike manner and form, and with good material.

Reporter may avail himself of provisions of this chapter by executing bond to governor.

CHAPTER 23.

OF THE MANAGEMENT OF THE PUBLIC PROPERTY.

Governor to be superintendent of public property, and to have charge of library,

SECTION 1. The governor of the state shall be, ex officio, superintendent of public property, until otherwise provided by law, and shall have charge and control of the library, and other moveable state property, the capitol, and public grounds around the same: Provided, that nothing herein contained shall authorize the governor to interfere with any rooms in the capitol that now are, or hereafter may be, appropriated by law for the use of the legislature or state officers, during the time the same shall be so used and occupied.

May appoint librarian, and employ workmen, &c.

SEC. 2. For the purpose of carrying out the provisions of this chapter, the governor is authorized and empowered to appoint a state librarian, who shall hold his office for one year, unless sooner removed by the governor, or by joint resolution of the legislature, or by law, and to employ such workmen in and about the capitol and public grounds as may be necessary to keep the same in a proper state of cleanliness and repair, and to make such improvements as shall appear necessary, or as may from time to time, be authorized by law.

Librarian to execute bond.

SEC. 3. The state librarian, when so appointed, shall execute to the state a bond in such amount, with such conditions, and with such security, as the governor shall direct and approve.

Duties of librarian; governor may make rules respecting library.

SEC. 4. The state librarian shall perform such duties as are now required to be performed by the superintendent of public property, and shall also perform such other duties as shall hereafter be prescribed by law, or by the governor, subject to the control, supervision and direction of the governor, as such superintendent. The governor may make such rules and regulations, not inconsistent with law, as he may deem proper, for the government of the state library.

Governor to take immediate possession, and state property to be under his control.

SEC. 5. The governor is hereby authorized to enter into and take immediate possession of the library, and all that thereto appertains, and upon the passage of this chapter the state property in and about the capitol shall be deemed in the possession of the state, and under the exclusive control of the governor.

Office of superintendent abolished.

SEC. 6. The office of superintendent of territorial property is hereby abolished.

CHAPTER 24.

OF THE SCHOOL AND UNIVERSITY LANDS, THE SALE AND SUPERINTENDENCE THEREOF, OF THE INVESTMENT OF THE FUNDS ARISING THEREFROM, AND THE POWERS AND DUTIES OF THE COMMISSIONERS OF SAID LANDS.

Board of commissioners, their powers and duties.

SECTION 1. The secretary of state, treasurer, and attorney general, shall constitute a board, to be called "the commissioners of the school and university lands," for the superintendence and sale of the school and university lands belonging to this state, and for the investment of the funds arising therefrom, in such manner as the legislature shall direct, and also for the investment of all other university and school funds; and they shall have the general care and superintendence of all of said lands, in such manner as the legislature shall direct, and any two of said commissioners shall be a quorum for the transaction of business.

When school lands to be sold and how, and when withheld.

SEC. 2. The said commissioners shall, before the fifteenth day of December, in the year one thousand eight hundred and fifty, offer for sale at public auction, as hereinafter provided, all the university lands and all the school lands embraced in the sixteenth section in every township in this state, which shall have been appraised according to law, and returns whereof shall have been duly made to the secretary of state prior to the first day of June, in the year aforesaid; but said commissioners shall, with the approval of the governor, withhold from such sale any portions of said lands, when in their opinion it will be most beneficial for the school or university fund that the same should be reserved from such sale

When residue to be sold; not subject to private entry until offered at auction.

SEC. 3. All school and university lands not offered for sale, as provided in the preceding section, except the same shall be purchased under a pre-emptive right, as hereinafter provided, shall from time to time, at the discretion of the commissioners and the governor, after the same shall have been duly appraised and returned, be offered for sale at public auction as hereinafter provided; and no such lands, except those above excepted, shall be subject to private entry, until they shall have first been offered for sale at public auction.

Minimum price.

SEC. 4. The minimum price of every tract or lot of school and university lands shall be the appraised value thereof, including the appraised value of the improvements thereon, and also the expense of appraising and subdividing the same; and no such lands shall be sold for less than such minimum price, except as hereinafter provided.

When and where to be sold; notice to be given; expenses how paid.

SEC. 5. All sales at auction of school and university lands, shall be made at such times and at such public place in each county in which such lands are situated as the commissioners and governor shall designate; and the commissioners shall, previous to any such sale, cause a notice thereof, specifying the time when and the place where the same will be held, to be published once in each week for at least eight successive weeks, in each newspaper printed in the county where such lands are to be sold, if any; but if there be no such newspaper, then in the newspaper printed nearest to the place where such sale is to be held; and the expenses of such publication and posting of notices shall be audited and paid by the commissioners, out of the school fund.

Sale how long to continue.

SEC. 6. At the time and place specified in such notice, the commissioners shall commence the sale of such lands as are then to be sold by them, and shall continue the sale from day to day, Sundays excepted, between nine o'clock in the forenoon and the setting of the sun, so long as shall be necessary.

CHAPTER 24.

Each lot to be offered separately at minimum price

SEC. 7. Each lot or tract of such lands, as appraised and described by the appraisers, then to be sold, shall, except as provided in the succeeding section, be offered separately at such sale, at the minimum price, as specified in the fourth section of this chapter, and shall be cried long enough to enable any one to bid who desires; and if the minimum price, or more than such price shall be bid, such lot or tract shall be struck off to the highest bidder; but if such price be not bid, the same shall be set down as unsold.

When two or more lots may be sold together.

SEC. 8. Whenever there shall be a water power upon any school or university lands which are offered for sale, it shall be optional with the commissioners to sell together all the tracts or lots upon which such water power is situated, and such other tracts or lots as are necessary for the use and enjoyment of the same, not exceeding, however, one hundred and sixty acres; or they may sell each such tract and lot separately, as in their opinion will be most beneficial to the interests of the school or university fund.

Order of sale; no person to purchase more than 160 acres.

SEC. 9. The order of sale at auction of the school and university lands shall be, to begin at the lowest number of the sections, towships, and ranges in each county, and proceed regularly to the highest, until all then to be sold are offered for sale; and no bid shall be received from any one person for more than one hundred and sixty acres of such land in this state.

Terms of payment

SEC. 10. The terms of payment on the sale of all school and university lands shall be, not less than ten per cent and not more than seventy-five per cent of the purchase money, to be paid at the time of the sale, as shall be determined by the commissioners, and interest on the balance to the first day of January next following, at seven per cent; and the balance of the principal to be paid in one or more instalments at any time within ten years from such sale, at the option of the purchaser, with like interest, payable in advance on the first day of January, or within thirty days thereafter in each year, at such place or places as shall be specified in the certificate of sale; but nothing in this section contained shall prevent any purchaser from paying the whole purchase money at the time of sale, if he chooses so to do.

Considerations to guide commissioners in the amount of first payment required.

SEC. 11. In fixing the amount of purchase money to be paid at the time of sale,the commissioners shall have reference to the amount of permanent improvements on the land sold, not liable to be destroyed, the proportion of timber, mineral or prairie, if any thereon, and the general situation of such land relative to its liability to be injured, or its becoming less valuable by trespass, waste or otherwise.

When first payment to be made.

SEC. 12. Upon the close of the sales each day, every purchaser of any lot or tract shall pay the amount of the purchase money, and interest, required by the terms of sale to be paid in hand, or in case of failure, to make such payment by the opening of the sales on the next day, the lot or tract so sold shall be again offered at public sale on the same terms as before.

Penalty for neglect to make first payment.

SEC. 13. If any purchaser shall refuse or neglect to make the payment specified in the preceding section before the lot or tract bid off by him shall be again offered for sale, he shall, for every such refusal or neglect, forfeit the sum of twenty-five dollars for each lot or tract so bid off by him, to be recovered in the name of the state by the commissioners.

Additional security, when required and how given.

SEC. 14. Whenever in the opinion of the commissioners, any school or university lands are so situated that additional security should be given for the payment of the balance of the purchase money, they may require such security, which shall be a bond and mortgage, the mortgage to be executed upon unincumbered real estate of double the value of the amount of the purchase money remaining unpaid.

Certificate of sale when forfeited.

SEC. 15. In case of the nonpayment, either of principal or interest, when due, according to the terms of the certificate of sale, such certificate shall become void from the time of such failure, and the purchaser or purchasers shall forfeit all right and interest in the land described in such certificate, and the commissioners may take immediate possession thereof and re-sell the same, as is hereinafter provided.

How revived before re-sale.

SEC. 16. At any time before a re-sale of such land, the payment of the sum due with interest, and all costs occasioned by the delay, together with five per cent damages on the whole sum owing for such land, shall prevent such re-sale, and revive the original contract.

Surplus on re-sale how disposed of

SEC. 17. If on a re-sale of such land, the same shall produce more than sufficient to pay the sum owing therefor, with interest and costs, and five per cent damages on the amount of purchase money unpaid, the residue when collected, shall be paid over to the former purchaser or his legal representatives.

If forfeiture, purchaser liable to suit for waste.

SEC. 18. In case of such forfeiture, the former purchaser of such land shall be liable to be sued for any waste or unnecessary injury which he may have done to the same, or to the timber or mineral thereon; and any suit therefor shall be prosecuted by the commissioners in the name of the state, for the benefit of the school or university fund.

Title to school lands to remain in state, and when patent to issue

SEC. 19. The title or fee of all school and university lands shall remain in the state until patents shall issue for the same, and no such patent shall issue except upon full payment of the purchase money and interest.

Force and effect of certificate of sale.

SEC. 20. The certificate of sale issued by the commissioners, pursuant to the provisions of law, shall entitle the purchaser to the possession of the lands therein described, and shall be sufficient evidence of title to enable the purchaser, his heirs or assigns, to maintain actions for injuries done to the same, or any proper action or proceeding to recover possession thereof, and also for rents becoming due, or breaches of covenant accruing after his purchase, under any lease existing at the time of such purchase; unless such certificate shall have become void by forfeiture.

Not to authorise cutting of wood, timber, &c.

May improve land and take firewood.

SEC. 21. No such certificate shall be deemed to confer upon the purchaser, or any person claiming under him, the right to cut down or destroy, or carry off from the land, any wood or timber standing or growing thereon, or any mineral therefrom, without the written consent of the commissioners, and only to the extent of such consent; but nothing herein contained shall prevent such purchaser from actually using and applying any wood or timber on the land to the erection of fences or buildings thereon; nor from taking firewood therefrom necessary for the use of his family; nor from actually and fairly improving any such land for the purposes of cultivation.

Certificates may be assigned and recorded.

SEC. 22. Certificates of sale in force, may be acknowledged and recorded in the same manner that deeds of conveyance are authorized to be recorded; and they may also be assigned by writing, which may be acknowledged and recorded in like manner; and the person to whom the same shall be legally assigned, shall have the same rights and remedies thereupon, as the original purchaser would have had.

If certificate lost, certified copy may be issued.

SEC. 23. Whenever any such certificate shall be lost or destroyed before the patent shall issue, the commissioners, upon satisfactory proof of the fact by affidavit to be filed with them, may issue a certified copy of the original certificate of sale to the person entitled thereto, which shall have the same force and effect as the original or duplicate.

Patents when to be issued.

SEC. 24. Whenever full payment shall have been made for any such lands, as required by law, and the purchaser or his legal representatives shall produce to the said commissioners the duplicate certificate of sale, with the receipt of the state treasurer endorsed thereon, showing that the whole of the principal and interest due thereon has been paid, and that the holder of such certificate is entitled to a patent for the lands described therein, the original and duplicate certificates shall be cancelled and a patent from the state for the land described in such certificate shall be issued by the commissioners to the person or persons entitled thereto; which patent shall be signed by the governor, and countersigned by the secretary of state, with the great seal of the state thereto affixed.

How purchase money may be retained as a loan; legislature may require payment.

SEC. 25. The purchaser of any such land, when the balance of the purchase money therefor shall become due, may retain the same as a loan from year to year, on payment annually in advance of the interest on the sum due, at the rate of interest specified in the certificate of sale; but no patent shall issue for such land until full payment is made as provided in the preceding section, together with all taxes levied thereon; and the legislature may hereafter change the law, so as to require payment of such purchase money at any time after one year from the time when the original credit shall have expired.

Purchasers may pay before money is due.

SEC. 26. Purchasers may, at any time before due, pay any part or the whole of such purchase money, and the interest thereon.

Forfeited lands shall be re-offered at auction.

SEC. 27. All school and university lands which shall be forfeited by the non-payment of either principal or interest, before the same shall be subject to private entry, shall be re-offered for sale at public auction, and the minimum price of all parcels or lots so forfeited, upon which improvements shall have been made, shall be such as shall be determined in the manner provided in the forty-sixth section of this chapter.

To be advertised and sold same as other school lands.

SEC. 28. Such forfeited lands shall, from time to time, at the discretion of the governor and said commissioners, be advertised and sold at public auction, in the same manner and on the same terms as is provided in this chapter for the sale of school and university lands at auction.

When school lands subject to private entry, and on what terms.

SEC. 29. All school and university lands which have once been offered at public sale, and remain unsold, and all forfeited school and university lands, if they shall have been re-offered at public sale and remain unsold, shall be subject to private sale to the person first making application therefor and complying with the terms of sale, at the last appraised value of such lands, including the expenses of appraising and subdividing the same; but if two or more persons shall apply at the same time to purchase any of such lands, the same shall be offered to the highest bidder, and the applicant who will pay the highest price shall be the purchaser.

If two or more apply.

Improvements when to be paid for by purchaser.

SEC. 30. Whenever any lot or parcel of the school or university lands shall have improvements thereon, and such improvements shall have been appraised, and returned by the appraisers, the person purchasing such land, if he be not the owner of such improvements, shall, in addition to the price agreed to be paid to the state for the land, pay to the person owning or entitled to such improvements the appraised value thereof, and interest on such value from the time of sale until paid, and the person owning or entitled to such improvements, may recover by suit such value and interest of the purchaser; and if the value of such improvements and interest thereon shall not be paid within two years from the day of sale, unless the person entitled to the same shall give further time for payment, the certificate of sale of such land shall become void, and the commissioners may re-sell the same; and no patent shall issue for such lands until satisfactory proof shall be produced to the commissioners that payment has been made as aforesaid for such improvements.

How sold when purchaser owns improvements.

SEC. 31. Whenever the person purchasing any lot or parcel of land, specified in the preceding section, shall be the owner of the improvements thereon, he shall be entitled to purchase the same as unimproved lands, irrespective of the value of the improvements.

Application for purchase to be in writing.

SEC. 32. Every person making application for the purchase at private sale of any school or university lands, shall produce to the secretary of state an application in writing, describing the tract or lot which he proposes to purchase by the proper number of the section, township and range, and the subdivision of the section, with his name subscribed thereto, which application the secretary shall file and preserve in his office.

Secretary to enter note of application, and give applicant memorandum.

SEC. 33. Upon the receipt of such application, the secretary of state shall, if the land applied for may then be sold, enter on books kept for that purpose a note of every such application, specifying the day when made, the name of the applicant, and the description of the land applied for, and shall also give to such applicant a memorandum, stating such application and describing the tract or lot of land specified in his application, and stating the price at which the same may be sold, and the amount to be paid at the time of sale, which memorandum shall be signed by the secretary.

When state treasurer to issue duplicate certificate; duplicates to be numbered, countersigned, &c.

34. Upon producing such memorandum to the state treasurer, and paying to him such sum as shall be required to be paid upon the sale for the land purchased, and also upon the payment of such sum as shall be so required to be paid upon the sale of any of said lands at public auction, the said treasurer shall give a receipt therefor to such applicant or purchaser, and shall make out, execute and deliver to such person a duplicate certificate of sale, in which he shall certify the description of the

land sold, the sum paid, and the amount remaining due thereon, and the times, the place, and terms of payment, and that if it shall be duly discharged, the purchaser or his assignees, or other legal representatives shall be entitled to a patent for such land; the original and the duplicate certificate shall be properly numbered, and signed by the treasurer, and countersigned by the secretary of state, and the original shall be filed and recorded in the office of the said treasurer; and no certificate, unless the duplicate shall be so countersigned, shall be valid in law.

Condition to be inserted in certificate.

SEC. 35. The said certificate shall further set forth, that in case of the non-payment into the state treasury of the purchase money as it shall become due, or of the interest due thereon, by the first day of January, or within thirty days thereafter, in each and every year, by the purchaser or purchasers, or by any person claiming under him or them, then the said certificate, from the time of such failure, shall be utterly void and of no effect, and the said commissioners may take possession of the land described in such certificate, and re-sell the same.

Duty of secretary on presentation of duplicate, and receipt

SEC. 36. Upon presentation by the purchaser to the secretary of state of the duplicate certificate and the receipt for the purchase money required to be paid at the time of sale, he shall countersign and deliver the same to such purchaser, and make a note thereof in the book of entries, and shall enter therein the day of sale, the name of the purchaser, the number of the certificate, the sum paid, and the amount of purchase money due; and when such lands shall have been sold at public auction, he shall note that fact, and describe the land sold, as specified in section thirty-two of this chapter.

Moneys paid for school lands to be in specie; receipts for same to be countersigned by secretary

SEC. 37. All moneys paid on account of school or university lands, whether for principal, interest, or otherwise, shall be paid to the state treasurer in specie only, and when so paid, he shall give his receipt therefor, and credit the proper fund therewith; and every such receipt or other writing given by the said treasurer, which purports to be evidence of money received by him on account of said lands, shall be countersigned by the secretary of state; and unless such receipt or other writing shall be so countersigned, it shall not be evidence of payment.

Receipts, &c , to be charged by secretary to treasurer.

SEC. 38. The secretary, upon countersigning such receipt or other writing, shall charge the said treasurer with the amount received by him as therein mentioned, in a book to be kept for that purpose, and shall also enter the name of the person paying the same, the number of the certificate upon which the amount shall be paid, and the time of the payment.

Monthly statements to be transmitted by secretary to governor.

SEC. 39. The secretary of state shall, after comparing with the attorney general the accounts so kept by him with those kept by the treasurer, on the first Monday of every month, transmit to the governor a statement of all the certificates of sale issued during the preceding month, the numbers thereof, a description of the lands mentioned in each, and the name of the purchaser; also showing the amount of moneys received by the treasurer on account of school and university lands, the names of the several persons paying the same, the time of payment, and the particular fund to which they belong.

Appraisers' reports, &c., to be recorded by secretary.

Sec. 40. The secretary of state shall record, in suitable books kept by him for that purpose, all the reports heretofore made, or which may hereafter be made by the appraisers of school and university lands, together with the plats and maps accompanying the same.

Accounts with purchasers to be kept by treasurer.

Sec. 41. The state treasurer shall open an account with each purchaser, for every tract or lot of said lands that shall be sold, either at public or private sale, in a book to be kept by him for that purpose; in which he shall charge the purchaser with the whole purchase money, and give him credit for all his payments, making the proper charges for interest as the same shall become due; and upon all the payments being completed, and the patent issued, the account shall be balanced.

Sales, &c., how to be noted on plats.

Sec. 42. Whenever any tract or lot of said lands shall be sold, the said secretary shall note the sale on the record of plats returned by the appraisers, by inserting the letter "S" upon such tract or lot at the time the certificate of sale shall be issued, and the letter "P" when the patent for the same is granted; and if the land sold shall become forfeited, he shall note the same by crossing the letter "S" on the day the forfeiture shall take place.

Governor, &c., to prescribe how books and accounts to be kept; books, &c., to be furnished.

Sec. 43. The governor together with said commissioners may prescribe such further regulations as to the manner of keeping books and accounts by the said commissioners, or either of them, as may appear necessary and proper, in order fully to carry into effect the provisions of this chapter; and the governor shall procure and furnish for the commissioners all such books and stationery as they or either of them shall need in the discharge of their duties under this chapter.

Lists of forfeited lands, &c., to be transmitted by commissioners to clerk of supervisors; duty of clerk.

Sec. 44. On or before the first day of June in any year when the commissioners of the school and university lands shall deem it necessary, they shall prepare and transmit to the clerk of the board of supervisors of every county in which such lands are situated, lists of all such forfeited lands in the several towns therein, and of the unsold school and university lands which have been once appraised and have improvements thereon, and also of all such other appraised school and university lands as have been offered for sale at public auction, and shall have remained unsold for two years thereafter, as they shall deem expedient; together with proper forms and instructions to be forthwith distributed by such clerk to the supervisors of the towns to whom the same may be directed.

Appraisement of lands and improvements to be made by town supervisors.

Sec. 45. The supervisors of every town receiving the lists and forms as aforesaid, shall after first being duly sworn faithfully and impartially to discharge their duties as appraisers, proceed to estimate and appraise the value of all the improvements upon the several lots and parcels of land specified in such lists and also the value of such portions of said lands as they shall be required to appraise; and after making such appraisement, they shall make return thereof duly certified by them to the commissioners, on or before the first day of August in the same year; all the expenses incurred under this section shall be paid out of the county treasury, of the proper county, and shall be allowed and paid to such county out of the school fund.

Appraised value of improvements to be added to value of land, &c.

SEC. 46. On the return of such appraisement the amount of the appraised value of improvements on each lot or parcel of land shall be added to the last appraised value of such land, and the amount thus obtained, together with all expenses of appraising and subdividing the same, shall be the minimum price of such lot or parcel until the same shall be changed by a subsequent appraisal; and the value of any lands that may be re-appraised, as provided in the preceding section, shall be the minimum price of such lands until the same shall again be appraised as aforesaid.

Village plats, when commissioners may make, &c.

SEC. 47. Whenever in the opinion of the commissioners, the school or university fund will be improved by laying off any section or portion of school or university lands into small parcels or village lots, the said commissioners may cause the same to be so laid off or subdivided, and appraised by three disinterested freeholders of the county in which the lands so to be subdivided are situated.

Appraisers to be appointed and how to proceed.

SEC. 48. Such freeholders shall be appointed by the commissioners, and after being first duly sworn faithfully and impartially to discharge the duties of their appointment, shall lay off the lands they may be directed to subdivide into parcels and lots, with streets and alleys where necessary, and shall appraise such parcels and lots at their true value respectively, and shall make a return of their doings, with the appraisement, and the survey and map of the lots so laid off, duly certified to the commissioners.

Village lots to be sold same as other lands.

SEC. 49. All parcels and lots so laid off and appraised, shall be subject to sale in the same manner, and upon the same terms and conditions as other school and university lands, at the prices at which they shall be so appraised, until a new appraisal shall be made, as herein before provided.

School lands may be reserved from sale.

SEC. 50. The said commissioners and the governor may, in their discretion, reserve and withhold from sale such portions of the school and university lands, as in their opinion it may not be advantageous to sell and dispose of, and for so long a time as in their opinion will be most beneficial to the university and school funds.

Improved school lands may be leased.

SEC. 51. The commissioners may, from time to time, lease, for terms not exceeding one year, and until the same are disposed of according to law, all such university and school lands as shall have improvements on them; and such leases shall contain proper covenants to guard against trespasses and waste, and the rents arising therefrom shall be paid into the state treasury to the credit of the proper fund.

Supervision of all public lands vested in commissioners.

SEC. 52. The said commissioners shall have the general care and supervision of all lands belonging to this state, and of all lands in which the state has an interest, or which are or may be held in trust by the state, unless the superintendence thereof is vested in some other office or board.

Surveys may be made by commissioners.

SEC. 53. Whenever it shall appear to the commissioners necessary that surveys should be made, in order to ascertain the true boundaries of any tract or portion of the school or university lands, or to enable them to describe and dispose of the same in suitable and convenient lots, they may cause all such necessary surveys to be made.

Prohibition of commissioners to purchase school lands.

SEC. 54. The commissioners of the school and university lands shall be precluded from purchasing any of said lands, either in their own name, or in the name of any other person in trust for them.

Fees of secretary and treasurer on sales.

SEC. 55. The secretary of state and treasurer shall each be entitled to receive twenty-five cents for each duplicate certificate of sale issued by them, and the same fees for each patent granted, to be paid by the purchaser or grantee, which shall be in full payment for clerk hire and expenses incurred in discharging the duties required of them by this chapter.

Annual report to be made by commissioners.

SEC. 56 The said commissioners shall annually make a report to the legislature of their official proceedings, showing the quantity of land sold or leased, and the amount received therefor; the amount of interest moneys accrued or received, the amount of money loaned in each county, and on what terms, and all such other matters relative to the duties of their office as they may think proper to communicate, or as the legislature may require.

Pre-emption of School and University Lands.

Pre-emption of school lands, who entitled to, and to what extent.

SEC. 57. There is hereby secured to all persons who now are, and who, previous to the twelfth day of August, one thousand eight hundred and forty-eight, were in the occupancy of any of the school and university lands in this state, and to any person or persons who, at the time of the appraisal were in possession of any such lands, either by a lease or the express permission of the school commissioners of the town where such lands are situated, where the lands are situated in counties which were under the township system of government, or without permission, where the lands are situate in those counties which were under the county system of government; the pre-emption right to purchase such portion of said lands so occupied by them, at the appraised value thereof: Provided, that no such right shall extend to more than the least subdivision of the section as divided by the appraisers, and shall in no case exceed forty acres; and provided, also, that no such pre-emptor shall be allowed to purchase any such land at a less price than one dollar and a quarter per acre.

When and how pre-emption rights to be proved.

SEC. 58. Whenever the said school or university lands shall be offered for sale, any person or persons residing thereon, or holding the same by lease, wishing to avail themselves of the pre-emption right secured to them in the preceding section, shall at any time before the day of such sale, prove up their right to such pre-emption before the said commissioners, by the affidavits of two or more disinterested persons, citizens of this state, and comply with the same conditions and obligations as are imposed upon other purchasers of said lands.

Forfeiture of right, if failure to prove same in time.

SEC. 59. If any person entitled to a pre-emption right, as is above provided, shall, previous to the day set for the sale of said lands, fail to prove up his pre-emption, as is prescribed in the preceding section, and comply with the terms and conditions imposed upon him, he shall forfeit all right to such pre-emption, and the said lands, so occupied, may be offered as other lands, and sold on the same conditions at such sale.

Pre-emptors when may purchase at appraised value.

Sec. 60. The commissioners of said lands are hereby authorized to sell the lands upon which pre-emption rights have been, or may hereafter be proven, to the person proving the right thereto, as is provided in the preceding sections, at the appraised value thereof, if such value shall not be a less sum than one dollar and twenty-five cents per acre, and for all lands claimed by pre-emption as aforesaid which have been appraised at a less sum than one dollar and twenty-five cents per acre, the commissioners are hereby authorized and required to increase the said appraisal to said sum, so that in no instance whatsoever shall any of the school or university lands within this state be sold to pre-emptors at a less sum than one dollar and twenty-five cents per acre.

No school lands to be sold for less than $1.25 per acre.

Of the School and University Funds, and the investment thereof.

Proceeds of school lands to be a perpetual fund; how the interest, &c., to be applied.

Sec. 61. The nett proceeds of all receipts into the treasury on account of the capital of the school fund, shall be set apart and remain a perpetual fund, the interest of which, and the revenues arising from the interest on the unpaid balances that may be due on the sales of school lands, and from the leases of said lands, shall be appropriated and applied to the support of common schools throughout the state, the maintenance of academies and normal schools, and the purchase of suitable libraries and apparatus for the same.

Same of university lands, and how the interest to be applied.

Sec. 62. The nett proceeds of the sales of all lands which have been or may be granted to this state for the support of a university, shall be and remain a separate and perpetual fund, the interest of which, and the rents accruing from the leases of said lands, shall be appropriated to the establishment and support of the state university.

The principal to be loaned, and how interest to be applied.

Sec. 63. Of the amount of the said school or university fund, the principal shall be loaned out, and the annual interest be applied in payment of the current expenses of the university and common schools throughout the state.

Loans of school moneys to be made in the several counties to citizens.

Sec. 64. The commissioners shall have the power, and it is hereby made their duty, from time to time, to make loans of any and all the moneys authorized by the preceding sections, to citizens of Wisconsin, on a pledge of real estate, to be secured by mortgage, as hereinafter prescribed: Provided, that all moneys arising from the sale of any school and university lands situate within the limits of any county in this state, shall be set apart and loaned to individual citizens, residents of said county.

A clear and valid title to lands offered in security to be exhibited by applicants.

Sec. 65. The commissioners shall duly inform themselves of the value of all real estate offered in pledge as aforesaid, and shall judge of the validity of the title thereof; and it is hereby made the duty of all persons, applying for a loan, to produce to said commissioners, for their inspection, the title papers, showing a clear and valid title, in fee simple, without incumbrance, for the property so offered in pledge, and not derived through any executor or administrator's sale, or sale on execution.

Commissioners to appraise lands offered in security may be appointed.

Sec. 66. The commissioners shall have power, whenever they may deem it necessary, to appoint commissioners in any county in this state, to value and appraise any lands which may be offered in mortgage.

SEC. 67. Such commissioners, first being duly sworn faithfully to discharge their duty as herein required, shall on the application of the owner of any land proposed to be mortgaged, examine and appraise the same, and give to the applicant a certificate signed by them, setting forth the value thereof in specie, at the common selling rate in their county at the time of such valuation.

Such commissioners to be sworn, and how to proceed.

SEC. 68. In making such appraisement, perishable improvements shall not be taken into consideration.

Perishable improvements, &c.

SEC. 69. Such certificate shall also show the quantity of land in acres; the quarter or half quarter section, the number of the section, township and range in which such land lies, or if said land consist of one or more town lots, the said commissioners shall otherwise specify and designate the land in the best manner possible.

Certificate of appraisement what to contain.

SEC. 70. The commissioners appraising any such land, or town lots, shall each be entitled to one dollar per day while so occupied, to be paid by the applicant.

Fees of commissioners to appraise.

SEC. 71. No greater sum than five hundred dollars, nor less than one hundred dollars, shall be loaned to any one person out of said fund.

Amount to be loaned to one person.

SEC. 72. The rate of interest required shall be seven per cent per annum, payable annually in advance.

Interest at seven per cent. to be paid.

SEC. 73. Whenever there shall be in the treasury any money belonging to the capital of the school or university fund, exceeding one thousand dollars, it shall be the duty of the commissioners of the school and university lands, to loan the same in the manner herein provided.

When $1000 in treasury, same to be loaned.

SEC. 74. No such loan shall be made for a longer period than five years: Provided that any person obtaining said loan may have the privilege of extending the time of payment of the principal from year to year, on payment annually in advance of the interest on the sum due, at the rate of interest specified in the original mortgage, and the legislature may hereafter change the law so as to require payment of such loaned money at any time after one year from the time when the original credit shall have expired.

Loans to be not more than five years with privilege of extension; &c.

SEC. 75. Nothing in the preceding section contained, shall prevent any person who may have obtained such loan, from paying the whole or any part of the principal at the time when any interest becomes due.

Principal may be paid at any time when interest due.

SEC. 76. The sum loaned shall not exceed one half of the appraised value of the premises to be mortgaged, clear of all perishable improvements; and the commissioners may reduce the amount to be loaned on any such valuation, when, for any cause they may have good reason to believe that the same was not in proportion to the prices of similar property selling in the vicinity.

Sum loaned not to exceed half the appraised value of land, &c.

SEC. 77. The mortgages taken for loans as aforesaid shall be considered as of record from the date thereof, and shall have priority of all mortgages or conveyances not previously recorded, and of all liens not previously incurred in the county where the land lies.

Mortgages taken to be deemed recorded from date, and to have priority, &c.

SEC. 78. It shall be the duty of the commissioners to have all such mortgages recorded with due diligence; the expense thereof shall be borne by the applicant for such loan, and may be retained out of the money borrowed.

Mortgages to be recorded and fee paid by applicant.

Abstract of title to lands mortgaged, &c., to be produced by applicant.

Sec. 79. The person applying for a loan shall produce and file with the commissioners a complete chain of title to the land offered to be mortgaged, and the certificate of the clerk of the circuit court, and register of deeds of the county in which the land lies, showing that there is no conveyance of, nor incumbrance on said land in either of their offices.

Applicant to make oath to truth of abstract, &c.

Sec. 80. Such person shall also, before he receives the money to be loaned, make oath to the truth of an abstract of title to his said land, and that there is no incumbrance, or better claim in law or equity that he knows or believes, upon, or to said land.

Loans and interest to be paid into state treasury, and receipt filed, &c.

Sec. 81. All loans refunded, and all interest, shall be paid into the state treasury; and the treasurer's receipt shall be filed with the said commissioners, who shall give the payor a quietus for the amount thereof, and make the proper entries on their books.

Mortgages how cancelled.

Sec. 82. Whenever the amount due on any mortgage shall be fully paid, and the treasurer's receipt filed therefor, the said commissioners shall endorse on the note and mortgage that the same has been fully satisfied, and surrender such note and mortgage to the person entitled thereto, and on the production of the same, with such endorsement thereon, the register of the proper county shall enter satisfaction upon the record thereof.

How moneys collected on note and mortgage, &c.

Sec. 83. When the interest or principal of any such loan shall become due and remain unpaid, the commissioners shall proceed to collect the same by suit on the note, or by sale of the mortgaged premises, or by both, as to them may seem advisable; they may also, by action of ejectment, obtain possession of the mortgaged premises.

No stay of execution allowed.

Sec. 84. In case of suit on such note, and judgment thereon, no stay of execution shall be allowed.

Waste, if wilful, on mortgaged premises, to be deemed a misdemeanor.

Sec. 85 Should any person, in possession of any such mortgaged premises, wilfully destroy or injure the same, whereby the security of the state shall be lessened, he shall be held guilty of a misdemeanor, and on conviction, be fined and imprisoned, at the discretion of the jury trying the same.

Sale of mortgaged premises, when and how advertised.

Sec. 86. On failure to pay any interest or principal, when due, on any such mortgage, the commissioners shall advertise the mortgaged property for sale, in one or more of the newspapers printed in the county where the land is situated; or, in case no newspaper is printed in said county, in a newspaper printed at Madison, for sixty days: such sale to take place at such place, and be conducted in such manner, as the commissioners may direct.

Sale how to be made

Sec. 87. At the time appointed for such sale, one or more of said commissioners shall attend, and they shall make sale of so much of the mortgaged premises to the highest bidder, for cash, as will pay the amount due for principal, interest, damages, and costs of advertising and selling the ssme

When commissioners to bid in and sell mortgaged lands.

Sec. 88. In case no one will bid the full amount due as aforesaid, the commissioners present shall bid on the same on account of the proper fund; and as soon thereafter as may be, shall sell the same to the highest bidder for cash, or on a credit of five years, interest being payable annually in advance.

Minimum price on such sale and over plus to whom paid.

SEC. 89. The sale authorized in the preceding section, shall not be for a less amount than the sum chargeable on said land, and if for more, the overplus shall be paid to the mortgagor, his heirs or assigns.

Sales may be in parcels.

SEC. 90. Such sales may be in parcels, so that the whole amount required be realized thereby.

Statement of sale to be made and recorded by commissioners.

SEC. 91. A statement of such sale shall be made out and signed by said commissioners, and shall be recorded in their office, and such record, or a copy thereof, authenticated by the certificate of the commissioners, shall be received as evidence of the matters therein contained.

Statement, &c., to vest title in state without deed.

SEC. 92. When any land is bid off by the state at such sale, no deed need be made therefor to the state; but the statement of such sale, and the record thereof, made as in the preceding section required, shall vest the title in the state for the use of the school fund.

Deed to purchaser when to be executed by governor.

SEC. 93. In case of a sale of any such lands to any person for cash, on production of the treasurer's receipt for the purchase money, the commissioners shall give to the purchaser a certificate, which shall entitle him to demand and receive a deed for said land, to be executed by the governor of this state, and recorded in the office of the secretary of state.

Purchaser on credit when entitled to deed, and how entries to be made, &c.

SEC. 94. In like manner, when any tract of land bid off by the state is sold on a credit, on the execution and delivery of a note and mortgage for the proper amount, as in other cases required, the purchaser shall be entitled to a deed for the same, to be made as prescribed in the preceding section; and the transaction shall be entered, and appear upon said commissioners' books, as a payment of the sum bid, and a re-loan of the same to the purchaser, and the proper receipts and warrants shall pass therefor.

Commissioners to keep account of moneys, and to report annually.

SEC. 95. The said commissioners shall keep fair and regular entries of the sums received and paid out on account of said fund, and shall report the names of borrowers, the sums borrowed, and a description of the property mortgaged, with their annual report to the legislature.

To keep account with borrowers, &c

SEC. 96. In addition thereto, the said commissioners shall keep fair and regular accounts with the borrowers of said fund, and shall include the same in their annual report.

Form of mortgage.

SEC. 97. The mortgage to be taken may be in the following form in substance, to wit: "I, A. B., of the county of   in the state of Wisconsin, do assign over and transfer to the state of Wisconsin, all (here describe the land) which I declare to be mortgaged for the payment of   dollars, with interest at the rate of seven per cent per annum, payable in advance, according to the conditions of the note hereunto annexed."

Form of note.

SEC. 98. The note accompanying the same may be in substance as follows, to wit: "I, A. B., promise to pay to the state of Wisconsin, on or before the   the sum of   with interest thereon at the rate of seven per cent per annum in advance, commencing on the   day of   18   , and do agree that in case of failure to pay any instalment of said interest, the said principal sum shall become due and collectable together with all arrears of interest; and on any such failure to pay principal or interest when due, five per cent damages on the whole sum due shall be collected with costs, and the premises mortgaged may be forthwith sold by the board of commissioners for the sale of the school and university lands, for the payment of such principal sum, interest, damages and costs."

Miscellaneous Provisions.

Village plats to be recorded.

SEC. 99. The said commissioners shall cause a correct map of every tract of school or university land, which has been or shall be laid off into village lots as provided by law, to be recorded in the office of the register of deeds of the county where such land is situated.

Patents may be recorded, and effect thereof.

SEC. 100. The registers of deeds of the several counties are authorized to record all patents issued by the commissioners pursuant to the provisions of this chapter, and the record thereof shall have the same effect as the record of other conveyances executed according to the laws of this state.

When sale of school lands to be void.

SEC. 101. In case of the sale of any school or university lands made by mistake, or not in accordance with law, or obtained by fraud, such sale shall be void; and no certificate of purchase issued thereon shall be of any effect, but the holder of any such certificate shall be required to surrender the same to the commissioners, who shall thereupon refund the amount paid for the land described in such certificate.

Fallen timber and grass on school lands may be sold by town superintendent, &c.

SEC. 102. The town superintendent of common schools in each town shall be authorized to sell the fallen timber and the grass growing upon any unsold school or university lands in his town, if such lands are not leased by the commissioners, and shall pay the proceeds thereof into the county treasury, for the benefit of the school or university fund, and shall immediately report the amount so paid, to the state treasurer.

Records, books, &c., of commissioners to be open to inspection free of charge.

SEC. 103. All records, books, reports, surveys, maps and plats kept by the said commissioners, or either of them, as provided in this chapter, shall at all business hours be open, in the presence of one of the commissioners, to the inspection of every person, free of charge.

When sales of school lands to be suspended by governor.

SEC. 104. If the state treasurer shall refuse or neglect to give an additional bond when required by the governor as provided by law, the governor shall by his proclamation suspend all sales of the school and university lands, and all payments on account of the same until such security is given, or a new treasurer shall be elected or appointed and duly qualified.

Lands sold under this chapter to be taxed, and interest of purchaser may be sold.

SEC. 105. All lands sold under the provisions of this chapter, shall be subject to the levy and collection of taxes, as in ordinary cases; and if the purchaser shall refuse or neglect to pay the taxes thus levied, and the collector shall be unable to find personal property upon which to levy, he shall return such land with other delinquent lands, and they shall be advertised, and the interest of the purchaser therein sold, in the manner prescribed by law for the sale of lands for delinquent taxes.

When occupant liable to action of forcible entry and detainer, &c.

SEC. 106. In case any person shall hold or continue in possession of any school or university lands without express permission in writing from the commissioners of said lands, or contrary to the conditions or covenants of any lease or written agreement, or after such lands shall have become forfeited by reason of the non payment of any portion either of the principal or interest due thereon, he shall be liable to an action of forcible entry and detainer, or other proper action or actions, for the recovery of the possession of such lands, and damages for the detention of the same.

Damages and fines recovered, to be paid into state treasury, &c.

SEC. 107. All damages and fines recovered for any trespass, or other injury upon or to any of the lands set apart for university or school purposes, or either, or any other lands belonging to the state, shall be paid into the state treasury, for the benefit of the fund to which the same may properly belong.

Former appraisers when and how long to continue in office; governor to fill vacancies.

SEC. 108. The appraisers appointed pursuant to an act entitled "an act providing for the appraisal and subdivision of the school and university lands," approved August twelfth, one thousand eight hundred and forty-eight, in those counties where the lands required to be appraised by said act have not all been appraised, shall continue to hold their appointment as such appraisers until all of said lands within their respective counties shall be appraised, and due returns thereof shall have been made, and they shall proceed with due diligence to make such appraisal and returns, whenever and as fast as said lands shall be surveyed; and in case of any vacancy in the office of such appraiser, the governor shall supply the same by appointment; and so much of said act as shall be necessary to carry into effect the provisions of this section is hereby continued in force.

Former act continued.

Surveyed school lands north and west of Wisconsin river may be appraised.

SEC. 109. The act to amend an act entitled "an act providing for the appraisal and subdivision of the school and university lands," approved March second, one thousand eight hundred and forty-nine, shall not be so construed as to prevent the commissioners for the counties of Brown and Winnebago from proceeding in the appraisal and subdivision of the surveyed lands in said counties, north and west of the Fox river, in the same manner as if said act had not passed.

Expenses of appraisers how to be paid.

SEC. 110. All necessary expenses incurred by the appraisers of the school and university lands, for the employment of surveyors, chainmen or packers, during the time said appraisers were engaged in the appraisal and subdivision of said lands, shall be paid out of the county treasury of each county, upon the certificate of said appraisers, to be refunded to such county paying the same, at the same time and in the same manner that the expenses of the appraisers are paid.

The costs of appraisal and survey to be paid by state treasurer to county treasurers.

SEC. 111. The state treasurer shall, upon the application of the treasurer of any county, pay over to such county treasurer the costs of appraising and surveying all school and university lands which have been sold in his county, and take his receipt therefor. The amount of money to be thus paid over shall be determined by the returns of the appraisers of the costs of appraisal and survey of the several tracts of land having been sold as aforesaid: Provided, if said county shall be delinquent in the payment of state revenue, the state treasurer shall retain the money so due and credit such county therewith.

When not to be paid.

Circuit judge to charge grand jury, &c

SEC. 112. It shall be the duty of each judge of the circuit court, especially to charge the grand jury at every term of such court, to inquire into all offences of trespassing on said lands, against the provisions of this chapter, and present any person who may be guilty of any such offence within their county.

TITLE IX.

CHAPTER 25.

OF THE FORMATION OF UNIFORM COMPANIES.

Forty or more persons may organize themselves into a uniform company and choose officers.

SECTION 1. Whenever any persons, to the number of forty or more, shall desire to organize themselves into a uniform company, either of artillery, light infantry, riflemen, or cavalry, and shall enter their names in a book for that purpose, they may proceed to choose, by ballot, the following officers, viz: one captain, one first lieutenant, one second lieutenant, four sergeants, and four corporals; and they may choose so many musicians as they may deem proper.

Company shall file with governor a copy of their proceedings, &c.

Governor to issue commisions.

SEC. 2. Such company so formed, shall cause to be filed with the governor a copy of their proceedings, accompanied with a list of the officers elected, above the rank of sergeant, and the number of persons who have enrolled themselves as members of said company the governor shall, upon satisfactory evidence that such company has been formed in good faith, issue commissions to the captain, and the first and second lieutenants thereof, and as often thereafter as any new election shall have been held to supply vacancies in any of the aforementioned offices.

Three directors to be elected, and their powers.

SEC. 3. Whenever the officers of any such company shall have been duly commissioned, as provided in the preceding section, such company shall elect by ballot three directors, who may contract and be contracted with, and may hold, purchase, and convey, for the benefit of the company, such real and personal estate as may be necessary for its use: such directors may be elected annually, or as often as any vacancy in their number shall occur.

Company may make by-laws, and impose and collect fines.

SEC. 4. Such company may also make such rules, regulations, and by-laws, as they may deem necessary for the government and management of the same, and may establish the sums which any member thereof shall pay, for any neglect or refusal to comply with such rules, regulations, and by-laws, and shall have power to sue for and collect the same.

Powers and duties of directors.

SEC. 5. It shall be the duty of the directors to take charge of, and safely preserve, and keep in good order and repair, the arms, instruments, and munitions of war, belonging to the state, which may be entrusted to the company, and for this purpose they may purchase and provide a suitable armory, and take charge of the same; and they shall take charge, and have a general supervision of, all the property belonging to the company; and for defraying the expenses of such armory, and other necessary matters, they may raise and collect such taxes on the members of such company, as the majority shall by vote direct, at any regular meeting called for that purpose.

CHAPTER 25.

Property of state in care of directors to be kept at depot, &c.

SEC. 6. All the property of the state, committed to the care of such directors, shall be kept at a general depot, and no member shall be allowed to take any article thereupon, unless permitted by the directors, and then only to be used on military occasions.

Captain to preside at meetings and enforce by-laws.

SEC. 7. The captain of such company shall preside at all meetings for the transaction of business, preserve order, enforce the by-laws, and see that they are carried into effect; in the absence of the captain, the highest officer in rank present shall exercise the duties of captain.

Treasurer to be elected annually, and his duties.

SEC. 8. Each such company shall annually elect a treasurer, who shall receive and keep all moneys raised by tax or otherwise, and belonging to the company, and shall pay over the same as may be ordered by a vote of the company, or to any person authorized in its behalf; such treasurer shall keep a book in which he shall charge himself with all moneys received belonging to the company, from whatever source, and credit himself with all such moneys paid out; and he shall render an account of his receipts and disbursements, whenever required by said company, or the officers thereof.

Upon application to governor for arms he shall require evidence that company consists of forty persons, &c.

SEC. 9. Upon the application of the directors of any uniform company to the governor of the state, for arms or ordnance for the use of such company, the governor shall require such evidence as he may deem proper, that the number of uniformed persons belonging to such company is not less than forty, and that they are furnished with a proper uniform; and if he shall be satisfied that such company is entitled thereto, he shall furnish such number of arms as shall be necessary for said company, provided there shall be any deposited in his possession belonging to the state.

Directors to execute bond to governor.

SEC. 10. Before any such arms or ordnance shall be delivered to any such company, the directors thereof shall execute to the governor a bond with sufficient sureties, for the safe keeping and return of such property when required by the governor.

Governor to require return of arms in certain cases.

SEC. 11. It shall be the duty of the governor to require the return of any arms or ordnance belonging to the state, and which have been furnished to any uniform company, whenever he shall become satisfied that they are not safely and properly kept, or that the company to whom they were furnished has become disbanded, or that there are not forty uniformed members belonging to such company.

TITLE X.

Of the Public Health.

Chapter 26. Of the preservation of the public health.
27. Of medical societies.

CHAPTER 26.

OF THE PRESERVATION OF THE PUBLIC HEALTH.

Section 1. The justices of the peace of every town, the president and trustees of every incorporated village, and the mayor and the aldermen of every incorporated city in this state, shall be boards of health, and as such shall exercise all the powers, and perform all the duties provided in this chapter, within the limits of the towns, villages, and cities respectively, of which they are such officers.

Who to constitute boards of health.

Sec. 2. Every board of health may take such measures, and make such rules and regulations, as they may deem most effectual for the preservation of the public health, and for that purpose may appoint a physician, who shall be the health officer of the territory within the jurisdiction of the board, and who shall hold his office during their pleasure; they may also appoint so many persons to aid them in the execution of their powers and duties, as they may think proper, and shall regulate the fees and charges of every person so employed by them.

To make regulations, appoint health officer, &c.

Sec. 3. The board of health may examine into all nuisances, sources of filth, and causes of sickness, and make such regulations respecting the same as they may judge necessary for the public health, and safety of the inhabitants; and every person who shall violate any order or regulation, made by any board of health, and duly published agreeably to the provisions of this chapter, shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months.

Board to examine into nuisances, &c.

Penalty for violating regulations of board.

Sec. 4. Notice shall be given by the board of health, of all orders and regulations made by them, by publishing the same in some newspaper, if there be one published in such town, village or city; if there be none, then by posting up such notice in five public places therein; and such publication of said orders and regulations shall be deemed a legal notice to all persons.

Notice of orders and regulations to be published.

Sec. 5. Whenever any nuisance, source of filth, or cause of sickness shall be found on private property, the board of health shall order the owner or occupant thereof, at his own expense, to remove the same within twenty-four hours; and if the owner or oc-

Nuisance on private property to be removed by owner, &c; penalty for neglect.

cupant shall neglect so to do, he shall forfeit a sum not exceeding fifty dollars.

Board may remove nuisance at expense of owner, &c.

SEC. 6. Whenever such owner or occupant shall not comply with such order of the board of health, said board may cause the said nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall be paid by the said owner or occupant, or by such other person as shall have caused or permitted the same.

Proceedings to remove or prevent nuisance in buildings or vessels

SEC. 7. Whenever the board of health shall think it necessary for the preservation of the health of the inhabitants, to enter any building or vessel in their city, village or town, for the purpose of examining into and destroying, removing, or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to a justice of the peace of his county, whether such justice be a member of such board or not, stating the facts in the case so far as he has knowledge thereof.

Justice to issue warrant to sheriff to remove or destroy nuisance, &c.

SEC. 8. Such justice shall thereupon issue a warrant, directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by two or more of the board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and the same destroy, remove, or prevent, under the direction of the members of such board of health.

Infected persons to be removed to separate house, &c.

SEC. 9. When any person coming from abroad, or residing in any town within this state, shall be infected, or shall lately have been infected with the small pox, or other contagious disease dangerous to the public health, the board of health of the town, village, or city, where such sick or infected person may be, may immediately cause him to be removed to a separate house, if it can be done without danger to his health, and shall provide for him nurses and necessaries, which shall be a charge to the person so removed and taken care of, or the parent, guardian, or other person who may be liable for the support of such infected person.

If infected person cannot be removed how board to proceed.

SEC. 10. If such infected person cannot be removed without danger to his health, the board of health shall make provision, as directed in the preceding section, for such person, in the house where he may be; and in such case, they may cause the persons in the neighborhood to be removed, and may take such other measures as they may deem necessary for the safety of the inhabitants.

Warrant to remove infected person may be issued by two justices

This chapter not to conflict with city charters.

SEC. 11. Any two justices of the peace may make out an order under their hands, directed to the sheriff or any constable of the county, requiring him, under the direction of the board of health, to remove any person infected with contagious disease, and to provide nurses, attendants and other necessaries, for the accommodation, safety and relief of such infected person. This chapter shall not be construed so as to annul or conflict with any powers granted in any city charter for the regulation of the public health.

CHAPTER 27.

OF MEDICAL SOCIETIES.

SECTION 1. Of county medical societies.
16. Of the state medical society.

Of County Medical Societies.

County medical societies how formed; choice of officers; term of office; to be bodies corporate.

SECTION 1. It shall and may be lawful for the physicians and surgeons in the several counties of this state, to meet together on such a day as they or a majority of them shall deem proper, at the place where the last term of the county court next preceding such meeting, shall have been held in their respective counties; and the several physicians and surgeons so convened as aforesaid, or any part of them, being not less than five in number, shall proceed to the choice of president, vice president, recording secretary, corresponding secretary, treasurer, and three censors; who shall hold their offices for one year, and until others are elected to fill their places; and when the said societies shall be so organized as aforesaid, they are hereby declared to be bodies corporate and politic, in fact and in name, by the names of the medical societies of the county where such societies shall respectively be formed, and by those names shall be in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places, and in all matters and causes whatsoever, and may have a common seal, which they may alter and renew at pleasure.

Who to meet and form such societies.

SEC. 2. All physicians and surgeons in the several counties, shall be entitled to meet in convention, for the formation of a medical society in their respective counties, agreeably to the provisions of the preceding section, and take part in its deliberations, and become members under the provisions of this chapter, who shall have received a diploma from any incorporated medical college or society of any of the United States or territories, or any foreign country.

May purchase and hold real and personal estate.

SEC. 3. It shall and may be lawful for the medical societies of the several counties of this state, to purchase and hold any estate, real or personal, for the use of said society: Provided, said estate shall in no case exceed the sum of five thousand dollars, and shall be used exclusively for objects promoting the advancement of medical science.

May make by-laws.

SEC. 4. It shall be lawful for the medical societies in the respective counties, to make such by-laws and regulations relative to the affairs, concerns and property of said societies, relative to admission and expulsion of members, the examination of students, and relative to donations or contributions, as a majority of the members shall think proper at any regular meeting of said society: Provided, that such by-laws, rules and regulations be not contrary to, nor inconsistent with, the laws of the United States, or of this state.

May grant diplomas; duty of censors, &c

Sec. 5. The medical societies established as aforesaid are hereby respectively empowered to examine all students who may present themselves for that purpose, and to grant them diplomas under the hand of the president and seal of the society; which diplomas shall constitute them members of said society. And it is hereby made the duty of the censors of each medical society carefully and impartially to examine all medical students who shall present themselves for that purpose, and report their opinion in writing to the president of the society.

Who permitted to be examined for diploma and membership.

Sec. 6. No person shall be permitted to be examined as a candidate for a diploma and membership of any of said societies, unless he shall have arrived at the age of twenty-one years, has, at least, a good English education, and has studied medicine at least three years with some respectable practitioner, and can produce satisfactory evidence of good moral character.

Fee for diploma

Sec. 7. Any student who may receive a diploma from any medical society of the state, shall pay to the president thereof ten dollars on receiving the same.

Annual assessment on members for certain purposes.

Sec. 8. It shall be lawful for each medical society to cause to be raised and collected from each of the members of said society, a sum not exceeding three dollars in any one year, for the purpose of procuring a medical library, anatomical cabinet, chemical apparatus, or for the encouragement of useful discoveries in the science of medicine.

Duties of president and vice president.

Sec. 9. The president shall preside at and govern all meetings of said society, and perform all other duties which appertain to his office; and in case of absence or disability of the president, the vice president shall perform the duties of president.

Duties of treasurer.

Sec. 10. The treasurer of each medical society established as aforesaid, shall receive and be accountable for all moneys that may come into his his hands by virtue of this chapter, and the by-laws of such society; and also all moneys which shall come into the hands of the president thereof, for the admission of members or licensing students; which moneys the president is hereby required to pay to the said treasurer, who shall account therefor to the society at its annual meetings; and no moneys shall be drawn from the treasury, unless such sums, and for such purposes, as shall be agreed upon by a majority at their annual meetings, and by an order signed by the president and countersigned by the recording secretary.

How moneys drawn from treasury.

Duties of recording secretary.

Sec. 11. It shall be the duty of the recording secretary of each of said societies, to provide a book, in which he shall make an entry of all by-laws, resolutions, rules, and regulations, which may be had from time to time, and also the name of each and every member of said society, and the time of his admission, and also the annual reports relative to the state of the treasury, and all such other things as a majority of the society shall think proper; to which book any member may at any time have access; and the same together all books, papers, and records, the property of said society, which may be in his hands, shall be delivered over to his successor in office.

Sec. 12. It shall be the duty of the corresponding secretary of each of said societies, to correspond on subjects relating to medical science, with the profession throughout the United States and foreign countries, and with the different societies of this state, when requested to do so by a resolution of the society of which he is a member, or whenever he may deem it advisable, and report to the meetings of said society every thing relating to such correspondence, which may be interesting to the profession.

Duties of corresponding secretary.

Sec. 13. If there should not be a sufficient number of physicians and surgeons in any of the counties of this state, to form themselves into a medical society, agreeably to the provisions of this chapter, it shall be lawful for such persons to associate themselves with the physicians and surgeons of adjoining counties, for the purposes hereby contemplated.

When the physicians in one county may associate with those of another.

Sec. 14. This chapter shall not be so construed, as to prevent any person from practising physic and surgery within this state, who is not a member of any of said societies.

Any person may practice though not a member.

Sec. 15. All the county medical societies which have been heretofore organized, shall be continued, with all the powers and privileges they have heretofore had.

County societies heretofore organized to be continued.

Of the State Medical Society.

Sec. 16. The medical society of the territory of Wisconsin, is hereby continued, under the name of the medical society of the state of Wisconsin, and as such shall enjoy all the rights and privileges, and possess all the powers heretofore had and exercised by it.

State medical society continued with all its rights and powers.

Sec. 17. Said association may adopt such constitution, and shall be capable of ordaining and enforcing such by-laws and regulations, as may be necessary for the admission and expulsion of its members, election of its officers, and for the proper management of its concerns: Provided, that said constitution and by-laws, rules and ordinances shall not be repugnant to the constitution of the United States, or the laws of this state, or contravene the provisions of the chapter organizing county medical societies.

May adopt constitution and by-laws.

Sec. 18. Each of the county medical societies of this state shall be entitled to elect delegates annually from its own body, not to exceed one for every five of its whole number of members, to represent it in the state society, who shall be entitled to all the privileges of membership of said body during the time for which they are elected.

Representation of county societies in state society.

Sec. 19. It shall be lawful for the medical society of the state of Wisconsin to grant diplomas, under the same restrictions required by the law organizing county medical societies.

May grant diplomas and how.

Sec. 20. Said medical society shall be entitled to elect permanent members of its own body among eminent physicians of this state, not however, to exceed two in each year, and also elect temporary members out of this state, not exceeding such numbers as may be designated by their by-laws.

May elect permanent and temporary members.

Appeals allowed from county societies to state society.

SEC. 21. All members of county medical societies, and all applicants for diplomas to said societies, who may be expelled or refused diplomas from the same, shall be entitled to the right of appeal to the medical society of the state, whose decision in the case shall be final.

Property of societies exempt from taxation

SEC. 22. The property of said society, and also the property of the medical societies in the different counties of this state, shall be forever exempt from taxation.

TITLE XI.

OF THE INTERNAL POLICE OF THE STATE.

CHAPTER 28. Of the relief and support of the poor.
29. Of the sale of spirituous liquors.
30. Of the sale of intoxicating liquors to Indians.
31. Of the support of bastards.
32. Of public shows and exhibitions.
33. Of the law of the road, and the regulation of public carriages
34. Of navigable rivers.
35. Of timber and lumber floating upon waters, or carried upon adjoining lands.
36. Of strays, and lost money and goods.
37. Of the disposition of unclaimed property.
38. Of marks and brands, and filing chattel mortgages.
39. Of unauthorized banking.
40. Of the protection of hedges, fences, fruit and ornamental trees, &c.
41. Of recording town plats.

CHAPTER 28.

OF THE RELIEF AND SUPPORT OF THE POOR.

SECTION 1. Of the support of the poor by their relatives and by towns.
32. Of the support of the poor by counties.

Of the Support of the Poor by their Relatives and by Towns.

SECTION 1. Every town shall relieve and support all poor and indigent persons, lawfully settled therein, whenever they shall stand in need thereof. Towns to support poor.

SEC. 2. Legal settlements may be acquired in any town, so as to oblige such town to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief, as follows: Legal settlements, how acquired.

1. A married woman shall always follow and have the settlement of her husband, if he have any within the state, otherwise, her own at the time of marriage, and if she then had any settlement, it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement, and the husband shall want relief, he shall receive it in the place where his wife shall have her settlement:

2. Legitimate children shall follow and have the settlement of their father, if he have any within the state, until they gain a settlement of their own; but if the father have no settlement,

they shall, in like manner, follow and have the settlement of their mother, if she have any:

3. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then have any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they were born, unless their parent or parents had a settlement therein at the time:

4. Every person of full age, who shall have resided in any town in this state one whole year, shall thereby gain a settlement in such town:

5. Every minor whose parent, and every married woman whose husband, has no settlement in this state, who shall have resided one whole year in any town in this state, shall thereby gain a settlement in such town:

6. Every minor who shall be bound as an apprentice to any person, shall, immediately upon such binding, if done in good faith, thereby gain a settlement where his or her master or mistress has a settlement:

7. Every settlement, when once legally acquired, shall continue until it shall be lost or defeated by acquiring a new one in this state, or by voluntary and uninterrupted absence from the town in which such legal settlement shall have been gained, for one whole year or upwards; and upon acquiring a new settlement, or upon the happening of such volutary and uninterrupted absence, all former settlements shall be defeated and lost.

To what cases this section to apply.

The provisions of this section shall apply to cases of settlements begun to be acquired, lost or defeated, before the provisions of this chapter shall go into effect, as well as after.

Residence as a pauper not to give settlement.

Sec. 3. But no residence of a person in any town, while supported therein as a pauper, shall operate to give such person a settlement in such town.

Town supervisors to have charge of the poor.

Sec. 4. The supervisors in each town shall have the oversight and care of all poor persons in their town, so long as they remain a town charge; and it shall be their duty to see that they are properly relieved and taken care of, in the manner required in this chapter.

What relatives to support poor persons.

Sec. 5. The father, mother, and children, being of sufficient ability, of any poor person who is blind, old, lame, impotent, or decrepit, so as to be unable to maintain himself, shall, at their own charge, relieve and maintain such poor person, in such manner as shall be approved by the supervisors of the town where such person may be.

Proceedings to compel relatives to support poor persons.

Sec. 6. Upon the failure of any relative to relieve and maintain any such poor person, it shall be the duty of the supervisors of the town where such poor person may be, to apply to the judge of the county court, where such relative may reside, for an order to compel such relief; of which application at least fourteen days notice in writing shall be given, by serving the same personally, or by leaving the same at the dwelling place of the person to whom it may be directed, in case of his absence therefrom, with some person of suitable age.

Court how to proceed, and what order may make.

Sec 7. The court to which such application may be made, shall proceed in a summary way to hear the proofs and allegations of the parties, and shall order such of the relatives aforesaid, of such poor person, as appear to be of sufficient ability, to relieve and maintain such person, and shall therein specify the sum which will be sufficient for the support of such poor person to be paid weekly.

Order in which relatives shall support poor persons.

SEC. 8. The said court shall also, in such order, direct the relative or relatives who shall perform that duty, in the following order: the father shall first be required to maintain such poor person, if of sufficient ability; if there be no father, or if he be not of sufficient ability, then the children of such poor person; if there be no such children, or if they be not of sufficient ability, then the mother, if she be able to do so.

Two or more relatives may be ordered to support poor person, &c.

SEC. 9. If it shall appear to the satisfaction of the court, that any such relative is unable wholly to maintain such poor person, but is able to contribute towards his support, the said court may, in its discretion, direct two or more such relatives to maintain such poor person, and shall prescribe the proportion which each shall contribute for that purpose; and if it shall appear to the satisfaction of the said court that the relatives liable as aforesaid are not of sufficient ability wholly to maintain such poor person, but are able to contribute something therefor, then the said court shall direct the sum in proportion to their ability which such relative shall severally pay weekly for that purpose.

Order what to specify; may be varied.

SEC. 10. Such order may specify the time during which the relatives aforesaid shall maintain such poor person, or during which any of the said sums so directed by the court shall be paid, or it may be indefinite, or until the further order of the court; and the said court may from time to time vary such order, whenever circumstances shall require it, on the application of any relative affected thereby, or of any supervisor of the town in which such poor person may be, upon fourteen days notice being given in the manner aforesaid.

Costs of proceedings to be paid by relatives; obedience to orders how enforced.

SEC. 11. The costs and expenses of such application, shall be ascertained by the court, and paid by the relatives against whom any order may be made; and the payment thereof, and obedience to the order of maintenance, and to any order for the payment of money, may be enforced by process of attachment.

Suits may be maintained against relatives by supervisors for neglect to comply with order.

SEC. 12. If any relative, who shall have been required by such order to relieve or maintain any poor person, shall neglect to do so in such manner as shall be approved by the supervisors of the town where such poor person may be, and shall neglect to pay to the said supervisors weekly the sum prescribed by the court for the support of such poor person, the said supervisors may maintain an action against such relative, as for moneys paid, laid out, and expended, and shall recover therein the sum so prescribed by the said court, for every week the said order shall have been disobeyed, up to the time of such recovery, with costs of suit, for the use of the poor.

Absconding father, mother, or husband, how proceeded against.

SEC. 13. Whenever the father, or the mother being a widow, or living separate from her husband, shall abscond from his or her children, or a husband from his wife, leaving any of them chargeable, or likely to become chargeable upon the public for their support, the supervisors of the town where such wife or children may be, may apply to any two justices of the peace of any county in which any estate, real or personal, of the said father, mother, or husband, may be situated, for a warrant to seize the same.

How warrant may be issued, and their goods, lands, &c., seized

SEC. 14. Upon due proof of the facts as aforesaid, the justices shall issue their warrant, authorizing the said supervisors to take and seize the goods, chattels, effects, things in action, and the lands and tenements of the person so absconding; and the supervisors, by virtue of such warrant, may seize and take the said property, things in action, and effects, wherever the same may be found in the same county; and they shall be vested with all the right and title to the said property, things in action, and effects, which the person so absconding had at the time of his or her departure.

Sales of personal property after warrant issued void.

Supervisors to make inventory and return same with proceedings.

SEC. 15. All sales and transfers of any personal property left in the county from which such person absconded, made by him or her after the issuing of such warrant, whether in payment of an antecedent debt, or for a new consideration, shall be absolutely void, and the said supervisors shall immediately make an inventory of the property, things in action, and effects, so seized by them, and return the same, with the proceedings, to the next county court for the county in which such supervisors reside, there to be filed.

County court how to proceed upon return of warrant, &c.

SEC. 16. The said county court, upon inquiring into the facts and circumstances of the case, may confirm the said warrant and seizure, or may discharge the same; and if the same be confirmed, such court shall, from time to time, direct what part of the personal property shall be sold, and how much of the proceeds of such sale, and of the rents and profits of the real estate, shall be applied towards the maintenance of the wife or children of the person so absconding.

Duty of supervisors in selling and applying property.

To account for same.

SEC. 17. The supervisors shall sell at public vendue the property so ordered to be sold, and receive the rents and profits of the real estate of the person so absconding, and shall apply the same to the maintenance and support of the wife or children of the person so absconded, and they shall account to the said county court for all moneys so received by them, and for the application thereof, from time to time, and may be compelled by said court to render such account, at any time.

When property to be restored to person absconding.

SEC. 18. If the person so absconding shall return, and support the wife or children so abandoned, or give security to the supervisors of the town, to be approved by two justices of the peace of such town, that the wife or children so abandoned shall not become, or thereafter be chargeable to the town, then such warrant shall be discharged by an order of such justices, and the property taken by virtue thereof, and remaining unappropriated, or the unappropriated proceeds thereof, after deducting the expenses of the proceedings as aforesaid, shall be restored to the party.

When supervisors may bind out minors; indentures how executed, &c.

SEC. 19. When any minor shall become, or be likely to become chargeable to any town, either because of being an orphan, or because the parents or other relations are unable, or refuse to support such minor, it shall be the duty of the supervisors of such town to bind such minor as an apprentice to some respectable householder of the county in which such town is situate, by written indenture, which shall bind such minor to serve as an apprentice, and shall be executed in like manner, and shall be of the same tenor and effect as indentures executed pursuant to the provisions of the chapter entitled "Of masters and apprentices;" and every minor so bound, and the supervisors binding him, and his master, shall be subject to all the provisions of said chapter.

Relief to poor persons not having settlement, how granted, &c.

SEC. 20. When any non-resident, stranger, or any other person, shall be taken sick, lame, or become otherwise disabled, in any town in this state, having no legal settlement therein, and not having money or property to pay his board, attendance and medical aid, it shall be the duty of the supervisors of such town, on complaint being made, to give, or order to be given such assistance to such poor person as they may deem just and necessary; and if said poor person shall die, the said supervisors shall give, or cause to be given to such person, a decent burial; and the said supervisors shall make such allowance for board, nursing, medical aid, or burial expenses, as they shall deem just and equitable, and order the same to be paid out of the town treasury.

Support of poor persons not having a settlement, to be a charge against the county.

SEC. 21. If any such poor person shall not have a legal settlement in said town, the expenses incurred by the town for his relief or maintenance, shall be a charge against the county in which such town is situated, and shall be audited by the county board of supervisors, and paid out of the county treasury; unless the town in which such poor person has a legal settlement shall pay the expense for his relief or maintenance.

Account for such support to be verified by affidavit, &c.

SEC. 22. Every account for the relief or maintenance of any poor person, presented to the county board of supervisors to be audited, as mentioned in the preceding section, shall be verified by the affidavit of one or more of the supervisors of the town in which such relief or maintenance was granted; and the said board of supervisors, before auditing and allowing such account, may require such reasonable proof as they may deem necessary, that such account is a legal county charge.

Removing or enticing pauper from one town to another, a misdemeanor.

SEC. 23. Any person who shall send, convey, transport, remove, or bring, or who shall cause or procure to be sent, carried, transported, removed, or brought, any pauper, from any town into any other town, knowing him to be a pauper, without legal authority, and there leave such pauper, or who shall entice such pauper so to remove, with intent to make any such town, to which the removal shall be made, chargeable with the support of such pauper, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be imprisoned in the county jail not exceeding one year, or fined not exceeding three hundred dollars, or both, in the discretion of the court.

Town in which a pauper has a settlement liable to town supporting him.

SEC. 24. If any person shall become a charge to any town for his support, and shall have no legal settlement therein, the supervisors of the town in which such person may have a legal settlement, shall be liable for the support of such poor person.

Pauper to be relieved in the town where he may be, but supervisors to give notice to town liable.

SEC. 25. In all cases mentioned in the two preceding sections, when any pauper shall be brought, removed, or enticed into any town, or any person shall have become chargeable in such town, not having a legal settlement therein, such persons shall be relieved and provided for by the supervisors of the town where they may be; and the said supervisors may give notice to the supervisors, or any one of them, of the town from which any such pauper was removed, brought or enticed, or of the town in which any such person, who shall have become chargeable, has a legal settlement, informing such supervisors thereof, and requiring them forthwith to take charge of such person.

Duty of supervisors of town to whom notice given.

SEC. 26. The supervisors to whom such notice may be directed, shall, within thirty days after the service thereof, take and remove such poor person to their town, and pay the expenses incurred in giving such notice, and in maintaining such poor person, from the time of his becoming a charge, to the town in which he is maintained.

Liability of supervisors if they neglect to remove pauper, &c.

If supervisors deny the allegation of the notice, &c., suit to be brought, &c.

SEC. 27. If the said supervisors shall omit to take and remove such poor person, and pay such expenses, within the said thirty days, they and their successors in office shall be liable for all the expenses of maintaining such poor person, so long as he shall remain a public charge, and the supervisors of the town where such poor person may be, may from time to time sue for and recover the same, with costs: Provided, that if the supervisors receiving such notice shall within said thirty days deny the allegations contained in such notice, and notify the supervisors giving the same of such denial, an action for such expenses shall be commenced within three months after such denial, or be forever barred, and no action shall thereafter be brought for such expenses.

Penalty for bringing pauper into this state

SEC. 28. Any person who shall bring or remove, or cause to be brought or removed, any poor or indigent person, from any place without this state, into any town within it, with intent to make such town chargeable with the support of such poor person, shall forfeit and pay fifty dollars, to be recovered before any justice of the peace of the town into which such poor person shall be brought, or in which the offender may be; and shall also be obliged to convey such poor person out of the state, or support him at his own expense.

Court may require security from person offending to transport pauper out of state, &c.

SEC. 29. It shall be lawful for the justice or court before whom such person shall be convicted for a violation of the provisions of the preceding section, to require of such person satisfactory security that he will, within a reasonable time to be named by the justice or court, transport such poor person out of the state, or indemnify such town for all charges and expenses, which have been or may be incurred in the support of such poor person; and if such person shall neglect or refuse to give such security when required, it shall be the duty of the justice or court, to commit him to the county jail for a term not exceeding three months.

Supervisors to report to town meeting the expenditures for support of poor, &c.

SEC. 30. The supervisors of the several towns shall present at each annual town meeting therein, a report, showing the amount of money expended by them for the relief and support of poor persons in such town, during the then preceding year, the name of each poor person or family relieved, and the amount appropriated for the support of each, together with all such other items of expenditure, incurred agreeably to the provisions of this chapter; they shall also in said report, present an estimate of such sum as in their opinion will be required for the support of the poor in such town, for the then ensuing year.

Appeals from decisions of justices upon proceedings

SEC. 31. Every decision of any justice of the peace, in any matter, proceeding, or suit, authorized by this chapter, may be apunder this chapter allowed.

pealed from in like manner, and under like regulations, as in other cases.

Of the support of the poor by counties:

How poor may become a county charge.

Sec. 32. A majority of the board of supervisors representing all the towns in any county at any annual meeting, or special meeting called for that purpose, may determine to abolish all distinction between county poor and town poor in such county, and have the expense of maintaining all the poor therein a county charge; and upon their filing such determination, duly certified by the clerk of their board, with the register of deeds of such county, the poor in such county shall be maintained at the expense thereof; and the board of supervisors shall have authority to levy and collect, on the taxable real and personal property of such county, such expense, in the same manner as other county charges.

Supervisors may levy tax.

When county superintendents of poor to be elected, &c.

Sec. 33. Whenever the board of supervisors in any county shall have determined to abolish the distinction between county poor and town poor, as mentioned in the preceding section, the said board shall elect by ballot three county superintendents of the poor, who shall hold their offices for such term, not less than one year, nor more than three years, as the said board of supervisors may determine.

Superintendents of poor to be a body corporate, and their powers and duties.

Sec. 34. The said superintendents shall be a corporation, by the name of the superintendents of the poor of the county for which they shall have been elected, and shall possess the usual powers of a corporation for public purposes; and they shall be capable of purchasing and holding real and personal estate for the use of the county, not exceeding five thousand dollars, and may convey the same when directed by the board of supervisors of said county; they shall have the general superintendence of the poor who may be in their county; and they may make such by-laws, and adopt such rules and regulations for the support and maintenance of the poor in their county, not inconsistent with the laws of this state, as shall be approved by the board of supervisors thereof.

Board of supervisors may levy a tax to purchase farm, &c.

Sec. 35. The board of supervisors in any county which shall have voted to abolish all distinction between county poor and town poor, may at any annual meeting, or special meeting called for that purpose, levy and cause to be collected a tax, not exceeding two mills on the dollar in any one year, for the purpose of purchasing or hiring a suitable farm and dwelling, and the necessary stock and implements for the management of the same, to which farm the poor in such county may be removed.

Powers and duties of town supervisors relative to the poor, to be conferred on superintendents.

Sec. 36. When any county shall have abolished the distinction between county poor and town poor, the same powers conferred and duties imposed in this chapter, on town supervisors, as officers of the poor, shall be exercised by the county superintendents of the poor in such county.

CHAPTER 29.

OF THE SALE OF SPIRITUOUS LIQUORS.

No person to vend spirituous liquors until he shall have executed a bond; condition of same.

SECTION 1. No person shall hereafter be allowed to vend or retail spirituous liquors, until he shall, in addition to any other requirements of the law, have executed to the treasurer or other proper officer of the county, city, town or village in which he may reside, or carry on such business, a bond in the penal sum of one thousand dollars, with three or more sufficient sureties, who shall be residents of the place where such business is carried on, conditioned to pay all damages that community or individuals may sustain, by reason of such traffic; to support all paupers, widows and orphans; pay the expenses of all civil and criminal prosecutions made, growing out of, or justly attributable to such traffic.

Bond to be filed, and copy evidence

SEC. 2. The bond above required, shall be filed with the proper officer, and a copy of the same properly authenticated, shall be received in evidence in all courts of justice in this state.

Copy to be delivered to person injured on demand.

SEC. 3. It shall be the duty of the officer with whom such bond may be filed, to deliver on demand, a copy of the same to any person who may claim to be injured by such traffic.

Married woman may sue on such bond.

SEC. 4. It shall be lawful for any married woman to institute and maintain in her own name, a suit on any such bond, for all damages sustained by herself or children, on account of such traffic, and the money when collected, shall be paid over to her for the use of herself and children.

No suit to be entertained for liquor bills, &c

SEC. 5. No suit for liquor bills shall be entertained by any courts of this state; and whenever it shall be made to appear to any court before which a suit may be pending on a promissory note, that such note was given in whole or in part for liquor bills, such court shall immediately dismiss such suit at the cost of the plaintiff.

Proof to charge seller with damages for the act of an individual under the influence of liquor.

SEC. 6. On the trial of any suit under the provisions of this chapter, the cause or foundation of which shall be the act of an individual under the influence of liquor, it shall only be necessary in order to sustain the action, to prove that the principal in the bond sold or gave liquor to the person so intoxicated, or in liquor, whose acts are complained of, on that day previous to the commission of the offence.

Suit may be instituted on bond of a person who has sold liquor to one becoming a pauper by intemperance.

SEC. 7. Whenever a person shall become a county, city, town or village charge, by reason of intemperance, a suit may be instituted by the proper authorities on the bond of any person who may have been in the habit of selling or giving liquor to such person or pauper so becoming a public charge.

Person against whom recovery had may compel contribution, &c.

SEC. 8. Any person against whom a judgment may be obtained under the provisions of this chapter, shall be entitled to maintain a suit to compel a contribution towards paying the judgment against him, against all persons engaged in such traffice, in such county, city, town or village, who may have sold or given liquor to such person committing an offence, or becoming a public charge.

SEC. 9. Any person who shall vend or retail, or for the purpose of avoiding the provisions of this chapter, give away spirituous liquors, without first giving the bond required by the first section of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than fifty, nor more than five hundred dollars, and be imprisoned in the county jail not less than ten days nor more than six months, and shall be liable in all respects to the public and to individuals, the same as he would have been had he given the bond required in the first section of this chapter.

Persons who have not executed bond, vending or giving away liquor, to be deemed guilty of a misdemeanor, &c.

SEC. 10. All suits authorized by the provisions of this chapter may be commenced and prosecuted before justices of the peace, when the damages claimed do not exceed one hundred dollars, although the penalty in the bond may exceed that amount, and the judgment shall be for the damages proved.

When suits under this chapter may be prosecuted before justices.

CHAPTER 30.

OF THE SALE OF INTOXICATING LIQUORS TO INDIANS.

SECTION 1. If any person shall sell, barter, give, or in any manner dispose of any intoxicating drink to any Indian within this state, he shall forfeit for every such offence the sum of fifty dollars, to be recovered by any person who will sue for the same in his own name, in an action of debt, before any justice of the peace of the county in which the offence shall be committed.

Penalty for selling or giving intoxicating drink to Indians.

SEC. 2. It shall not be lawful for any person to sell, give, or dispose of, or keep for any such purpose, any intoxicating liquors at any place within five miles of the mouth of Wolf river, in the county of Winnebago; and any agent, Indian agent, or any civil magistrate, sheriff, or constable, shall have, and is hereby given the authority to seize and destroy any liquor found within the said five miles, without any other or further warrant therefor: Provided, that this section shall not authorize any such officer to enter a permanent dwelling, or store-house, of a person residing within said five miles.

No person to sell, give or keep liquors within five miles of the mouth of Wolf river.

If there found by whom destroyed.

Proviso.

SEC. 3. When any offence shall hereafter be committed under the first section of this chapter, it shall be lawful to prosecute the offender by indictment, in the circuit court of the proper county; and upon conviction, the offender shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or both, in the discretion of the court.

Where offender to be prosecuted and how punished.

SEC. 4. It shall be the duty of the several circuit courts of this state, to give this chapter specially in charge to each grand jury that may be empannelled in the several circuits; but nothing herein contained shall be construed to prohibit the prosecution for such offences before justices of the peace, as heretofore.

Circuit judges to give this chapter in charge to grand jury.

May be prosecutions before justices.

Duty of sheriffs, constables, &c., to present names of persons violating this chapter to a justice.

SEC. 5. It is hereby made the duty of every sheriff and his deputies, and of every coroner and constable, to present the names of any and all persons who have violated, or there is good reason to believe have violated, the provisions of this chapter, to some justice of the peace of his county; and the justice shall thereupon issue his summons or warrant, to bring the person so charged, or suspected, before him forthwith, and shall proceed to investigate fully the matter, and if the person so charged or suspected shall be found guilty, the justice shall impose the penalty fixed in this chapter.

Penalty on such officers for neglecting to present persons.

SEC. 6. If either of the officers mentioned in the preceding section shall neglect to discharge the duties therein required of him, he shall, upon conviction thereof, forfeit the sum, and be liable to the same penalty as specified herein before for a violation of the provisions of this chapter by other persons.

CHAPTER 31.

OF THE SUPPORT OF BASTARDS.

When justice may issue warrant against person accused of being father of a bastard, &c.

SECTION 1. On complaint being made to any justice of the peace, by any female who shall be delivered of a bastard child, or who shall be pregnant with a child, which if born alive may be a bastard, accusing any person of being the father of such child, the justice shall take such complaint in writing, under the oath of such female, and shall thereupon issue his warrant against the person accused, directed to the sheriff or any constable of his county, commanding him forthwith to bring such accused person before the justice, to answer such complaint.

Proceedings on return of warrant with accused in custody.

SEC. 2. On the return of such warrant, if the accused be in custody or shall appear, the justice shall proceed to examine the complainant under oath, respecting the cause of the complaint; and such accused person shall be allowed to ask the complainant, when under oath, any questions necessary for his justification or defence; and such questions and the answers, with every part of the proceedings, shall be reduced to writing by said justice.

When justice may discharge person accused.

SEC. 3. If such accused person shall pay, or secure to be paid to the female complaining, such sum or sums of money, or other property, as she may agree to receive in full satisfaction, and as shall be approved by the supervisors of the town, of which agreement and approval the justice shall make a memorandum upon his docket; and if the accused shall also enter into bonds, with sufficient sureties to be approved by the justice, to the supervisors of the town in which such female shall reside, and their successors in office, conditioned to secure and indemnify such town from all charges for the maintenance of such child, and shall also pay all expenses, if any, incurred by such town for the lying in and the support and attendance upon the mother of such child during her sickness, and the costs of the prosecution, then the justice shall discharge such accused person.

When justice to bind accused in a recognizance, or commit him to jail, &c.

Sec. 4. In case any person accused as aforesaid does not comply with the provisions of the preceding section, the justice before whom the complaint shall be made, shall bind such person in a recognizance, with one or more sufficient sureties, to be approved by the justice, in a sum not less than one hundred dollars, nor more than five hundred dollars, to appear at the next term of the circuit court for the proper county, to answer the said complaint, and to abide the order of said court thereon; and on his neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer to such complaint, at the next term of such court; and such justice shall thereupon certify the examination so taken before him, and shall return the same and all process and papers in the case to the clerk of said court.

When cause shall be continued and recognizance renewed

Sec. 5. If at the next term of said court, the complainant shall not have been delivered, or shall not be able to attend, or if at any time there shall be any other sufficient reason therefor, the court may order a continuance of the cause from term to term, as shall be judged necessary, and upon such continuance, shall order the renewal of the recognizance, and when renewed, the same shall remain in full force until final judgment: Provided, That if the sureties in the recognizance shall at any term of said court, object to being any longer held liable, or if the court shall for any cause deem it proper, such court may order a new recognizance to be taken; and the defendant shall stand committed until he give such new recognizance.

Mother to be a witness; when examination to be evidence; when father chargeable with maintenance of child.

Sec. 6. Upon the trial of the cause, the mother of the bastard shall be admitted as a witness, unless she shall have been convicted of a crime which would by law render her incompetent as a witness in any other suit; and if on the trial, the mother of the bastard be not present, the examination taken before the justice shall be given in evidence; and the issue shall be whether the accused is guilty or not guilty; and if he shall be found guilty, or if he shall admit the truth of the accusation, he shall be adjudged to be the father of such child, and shall stand chargeable with the maintenance thereof, in such sum or sums, or in such manner as the court may direct, and the payment of all the costs of prosecution; and the examination taken before the justice shall in all cases be read to the jury when the reading of the same shall be demanded by the accused.

The person convicted to give bonds, or be committed to jail.

Sec. 7. The person so adjudged to be the father of such child, shall give bonds to the supervisors of the proper town, with sufficient sureties to the satisfaction of the court, for the performance of such order, and also for the payment of all expenses incurred by such town for the lying in and attendance upon the mother of such child during her sickness, and also for the care and support of such child prior to the giving of such bond; and in case he shall neglect or refuse to give such bond and pay the costs of prosecution, he shall be committed to the jail of the county, there to remain till he shall comply with the order of the court, or until he shall be discharged therefrom as provided by law.

When and how person imprisoned may be discharged from imprisonment.

Sec. 8. Any man who shall have been imprisoned ninety days, for having failed to comply with the order of the circuit court, as provided in this chapter, shall have the benefit of the law for the relief of prisoners committed on execution issued on a judgment recovered in an action of tort: Provided, he shall procure the like notification of his intention to take the oath, prescribed by said law to be served on the complainant, if still living within this state, and also upon the chairman of the said board of supervisors; such notification to be served at least fifteen days before the time appointed for taking the oath.

The mother or the supervisors may recover of the prisoner after liberation any money he is adjudged to pay.

Sec. 9. The mother of such child, and the said board of supervisors respectively, may at all times after the liberation of such prisoner on taking said oath, recover by action any sum of money which ought to have been paid to them respectively by him, in pursuance of such order of the court.

When supervisors or others may prosecute proceedings commenced by mother.

Sec. 10. When the mother of a bastard child commences any such proceeding and fails to prosecute the same, the supervisors of the proper town, or any person interested in the support of such bastard, may prosecute the proceedings commenced by the mother to final judgment.

When town supervisors may apply to justice to inquire into case of bastardy

Sec. 11. If any female shall be delivered of a bastard child, which shall be a public charge, or likely to become a public charge, or shall be pregnant of a child likely to be born a bastard, and to become a public charge, the board of supervisors of the town where such female shall reside, or any of them, may, upon application for aid in supporting such child by the mother thereof, or if they deem proper, without such application, apply to some justice of the peace of the same county, to make inquiry into the facts and circumstances of the case.

Justice to examine female and issue warrant, how warrant executed, &c.

Sec. 12. Such justice shall examine such female on oath respecting the father of such child, the time when, and the place where she was begotten with child, and such other circumstances as the justice may deem necessary for the discovery of the truth; and shall thereupon issue his warrant to apprehend the reputed father; and the same proceedings shall be thereupon had as if complaint had been made by such female, as prescribed in the foregoing provisions of this chapter, and with the like effect; any warrant issued under the provisions of this chapter may be executed in any part of this state, and in all cases, said supervisors and the accused may require the attendance of such female to testify, the same as witnesses in other cases.

Supervisors may compromise with putative father

Sec. 13. The supervisors of any town in this state shall have power to make such compromise and arrangement with the putative father of any bastard child in such town, relative to the support of such child, as they shall deem equitable and just, and thereupon may discharge such putative father from all liability for the support of such bastard.

CHAPTER 32.

OF PUBLIC SHOWS AND EXHIBITIONS.

Town board may license and regulate shows and exhibitions.

SECTION 1. The town board of any town, at any meeting held for that purpose, may license theatrical exhibitions, public shows, and such other exhibitions as they may deem proper, to which admission is obtained on payment of money, upon such terms and conditions as they shall think reasonable, and may regulate the same in such manner as they shall think necessary for the preservation of order and decorum and to prevent any disturbance to the public peace; but no such license shall be in force for a longer time than the officers granting the same shall have been elected to office.

Penalty for setting up show or exhibition without or contrary to license.

SEC. 2. Any person who shall set up or exhibit any such exhibition or show, without a license first obtained, as provided in the preceding section, or contrary to the terms and conditions of such license, or while such license is suspended, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding two hundred dollars.

The authorities of cities or villages may grant licences.

SEC. 3. Nothing contained in this chapter, shall be construed as preventing the board of trustees of any incorporated village, or the proper authorities of any incorporated city, from licensing such theatrical exhibition, public show, or other exhibition, in pursuance of the authority granted by the charter of such village or city respectively, or the acts under which they may be incorporated, and agreeably to the ordinances and by-laws made in pursuance of the provisions of such charter or act of incorporation.

CHAPTER 33.

OF THE LAW OF THE ROAD, AND THE REGULATION OF PUBLIC CARRIAGES.

Persons travelling with carriages, &c., on roads to drive to the right.

SECTION 1. Whenever any persons shall meet each other on any bridge or road, travelling with carriages, waggons, sleds, sleighs, or other vehicles, each person shall seasonably drive his carriage or other vehicle to the right of the middle of the travelled part of such bridge or road, so that the respective carriages, or other vehicles aforesaid, may pass each other without interference.

Penalty for neglect.

SEC. 2. Every person offending against the provisions of the preceding section, shall for each offence forfeit a sum not exceeding twenty dollars, and shall also be liable to the party injured for all damages sustained by reason of such offence.

Persons owning or having control of vehicle for

SEC. 3. No person owning, or having the direction or control of any coach, or other vehicle, running or travelling upon any road

Conveyance of passengers not to employ drunken drivers.

in this state, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such coach or other vehicle, who is addicted to drunkenness, or to the excessive use of intoxicating liquors; and if any such person shall violate the provisions of this section, he shall forfeit at the rate of five dollars per day for all the time during which he shall have kept such driver in such employment.

Driver guilty of intoxication to be discharged on complaint of any passenger

SEC. 4. If any driver, whilst actually employed in driving such coach or vehicle, shall be guilty of intoxication, it shall be the duty of the owner or person having the charge or control of such coach or other vehicle, on receiving written notice of the fact, signed by any passenger who witnessed the same, and certified by him under oath, forthwith to discharge such driver from such employment, and every person who shall retain or have in such service, within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit five dollars per day for all the time during which he shall keep any such driver in such employment after receiving such notice.

If driver leave horses without fastening, he and his employer liable to penalty.

SEC. 5. It shall not be lawful for the driver of any carriage, or other vehicle used for the conveyance of passengers for hire, to leave the horses attached thereto, while any passenger remains in or upon the same, without making such horses fast with a sufficient halter, rope, or chain, or without some suitable person to take the charge and guidance of them, so as to prevent their running; and if any such driver shall violate the provisions of this section, he and his employer or employers, jointly and severally, shall forfeit a sum not exceeding twenty dollars; but no prosecution shall be commenced therefor after the expiration of three months from the time of committing the offence.

Owners of carriages conveying passengers for hire, liable for all damages occasioned by drivers

SEC. 6. The owners of every carriage or other vehicle, running or travelling upon any road or public highway, for the conveyance of passengers for hire, shall be liable, jointly and severally, to the party injured, in all cases, for all injuries and damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person, or to the property of any person, whether the act occasioning such injury or damage be wilful, negligent, or otherwise, in the same manner as such driver would be liable.

CHAPTER 34.

OF NAVIGABLE RIVERS.

Meandered streams and rivers declared navigable to certain extent.

SECTION 1. All rivers and streams of water in this state, in all places where the same have been meandered, and returned as navigable, by the surveyors employed by the United States government, are hereby declared navigable, to such an extent that no dam, bridge, or other obstruction may be made in or over the same, without the permission of the legislature.

CHAPTER 35.

OF TIMBER AND LUMBER FLOATING UPON WATERS, OR CARRIED UPON ADJOINING LANDS.

SECTION 1. Whenever any logs, timber, boards, or planks, in rafts or otherwise, shall be drifted upon any island in any of the waters within this state, or upon the bank or shore of such waters, the owner of such logs, timber, or lumber, may, at any time within one year, remove the same, on paying or tendering to the owner or occupant of the land such reasonable damages as may be caused by reason of such removal; and if the owner shall not, within the said year, make such payment or tender, and take such logs, timber, or lumber, from such lands, unless he and the owner or occupant of such lands shall otherwise agree, the same shall be deemed the property of such owner or occupant of the lands.

When the owner of logs, timber, &c., drifted on shore may remove same.

When deemed the property of owner of land.

SEC. 2. Whoever shall unlawfully cut out, alter or destroy any mark of the owner, made on the logs, timber or lumber put into any lake, river, stream, or pond, shall forfeit a sum not exceeding ten dollars for each log, stick of timber, or piece of lumber, the mark of which he shall have so altered, cut out, or destroyed, and shall be liable to the party injured in three times the amount of damages.

Penalty for altering or destroying mark on logs, timber, &c.

SEC. 3. In any suit under the provisions of the preceding section, if such logs, timber, or lumber, shall be found in the possession of the defendant, with the marks cut out, altered or destroyed, it shall be considered presumptive evidence of his guilt, and the burthen of proof shall be upon him to discharge himself.

Burthen of proof to be on person having in possession logs, &c., with marks destroyed or altered.

SEC. 4. Whoever shall convert to his own use, without the consent of the owner thereof, any logs, timber, boards, or planks, floating in any of the waters of this state, or lying on the banks or shores of such waters, or on any island where the same may have drifted, except as in this chapter provided for, shall be liable to the owner thereof in treble the amount of damages.

Penalty on person converting floating logs, &c.

CHAPTER 36.

OF STRAYS, AND LOST MONEY AND GOODS.

SECTION 1. Of strays.
10. Of lost money and goods.

Of Strays.

SECTION 1. No person shall take up any stray, except horses and mules, unless such person shall be at the time a resident of the same town wherein such stray shall be found, nor unless such stray shall be found upon the lands owned or occupied by the finder.

Who may take up strays.

SEC. 2. Any person taking up a stray, shall within seven days thereafter, notify the owner thereof, if to him known, and request

Within what time notice to be given to owner.

such owner to pay all reasonable charges, and take such stray away.

How notice is to be given if owner of stray is unknown.

Sec. 3. If the owner of any stray be unknown, the finder shall, within ten days after taking up the same, file a notice thereof, with the town clerk of the town, and if the stray or strays so taken up are of the value of less than five dollars, he shall also post up notices of the taking up of such stray, in two or more public places in such town; but if the stray or strays so taken up are of the value of more than five dollars, he shall cause such notice to be published in some newspaper of the county, for four weeks successively, if one be printed therein, if there be none, then by posting up written notices in three of the most public places in the county; all said notices shall contain a brief description of the stray; describing the same by giving marks, natural and artificial, as near as practicable, the name and residence of the finder, and as near as may be, the time at which the same was taken up; the said town clerk shall transmit a copy of every such notice to the clerk of the board of county supervisors.

When value of stray is ten dollars, appraisal to be made and filed.

Sec. 4. Every finder of a stray or strays, which, when taken up are of the value of ten dollars or more, shall, within one month after taking up the same, procure an appraisal thereof by a justice of the peace of his town, which appraisal shall be certified to by such justice, and within the time before mentioned, filed in the office of the town clerk of such town; and he shall pay to such justice fifty cents for such appraisal and certificate, and six cents for every mile necessarily travelled in such service.

Owner may have stray restored within one year.

Sec. 5. If the owner, or person entitled to the possession of any stray shall appear at any time within one year after the notice is filed with the town clerk as aforesaid, and make out his right thereto, he shall have such stray restored to him, upon paying all lawful charges which have been incurred in relation to the same.

If owner and finder cannot agree upon amount of charges, a justice shall settle same.

Sec. 6. If the owner and the finder of any stray cannot agree upon the amount of such charges, or for the use of such stray, either party may make application to any justice of the peace of the town where such stray was taken up, to settle the same, and the party making such application shall give notice thereof to the other party; and if any amount shall be found due to the finder by the said justice, over the value of the use of such stray, the same shall be a lien on said stray until paid by the owner, and the costs of such adjudication shall abide the decision of the justice.

When stray to be the property of finder without sale.

When stray shall be sold, and how, and how proceeds disposed of.

Sec. 7. If the owner, or person entitled to the possession of any stray, shall not appear and make out his title thereto, and pay the charges thereon within one year from the time the notice is filed with the town clerk, as aforesaid, and if such stray shall not have been appraised at a greater value than ten dollars, the finder shall have a perfect title to the same; but if the appraised value of such stray shall have been adjudged to be more than ten dollars, as provided in the fourth section of this chapter, such stray shall be sold at the request of the finder, by any constable of the town at public auction, upon first giving public notice thereof in writing, by posting up the same in three of the most public places in such town, at least ten days before such sale, and the finder may bid therefor at such sale; and after deducting all the lawful charges of the finder as aforesaid, and the fees of the constable, which shall be the same as upon a sale on an execution, one half of the remaining proceeds of such sale shall be deposited in the treasury of the town to be disposed of in such manner as the town may direct, and the other half shall belong to the finder.

Penalty on any person who shall take stray without consent of finder, &c.

SEC. 8. If any person shall, without the consent of the finder, take away any stray taken up pursuant to the provisions of this chapter, without first paying all the lawful charges incurred in relation to the same, he shall be liable to the finder for the value of such stray.

Penalty on finder for neglect to advertise or procure appraisal.

SEC. 9. If the finder of any stray shall neglect to cause the same to be advertised, or a notice thereof to be posted up, or if he shall neglect to procure the appraisal of any stray which shall be of the value of ten dollars or more, or if he shall neglect to perform any of the duties required of him in this chapter, he shall be precluded from acquiring any right of property in such stray, by the provisions of this chapter, or receiving any damages or charges for keeping the same.

Of lost Money and Goods.

When and how the finder of money or goods to give notice thereof

SEC. 10. If any person shall find any money or goods of the value of three dollars or more, and if the owner thereof be unknown, such person shall, within five days after finding such money or goods, give notice thereof in writing to the town clerk of the town in which such property was found, and shall also, within said five days, cause a notice thereof to be posted up in two public places in the same town.

When also notice to be published, and appraisal procured, &c.

SEC. 11. Every finder of lost goods, of the value of ten dollars or more, shall, in addition to the requirements in the preceding section, within fifteen days after finding the same, cause notice thereof to be published in a newspaper printed in the county, if there be one published therein; if there be none, then such notices shall be posted up in three of the most public places in the county, and if no person shall appear to claim the same who may be entitled thereto, he shall within two months after finding such goods, and before using the same to their injury, procure an appraisal thereof by a justice of the peace of his town, which appraisal shall be certified to by such justice, and filed in the town clerk's office of such town.

Within what time and on what terms owner to have restitution.

SEC. 12. If the owner of such lost money or goods shall appear within one year after notice given to the town clerk as aforesaid, and shall make out his right thereto, he shall have restitution of the same or the value thereof, upon his paying all the costs and charges thereon, including a reasonable compensation to the finder for his trouble.

If owner do not appear, finder to pay one half of value to town treasurer.

SEC. 13. If no owner shall appear within one year, then the finder of such lost money or goods shall pay one-half of the value thereof, after deducting all legal charges, to the treasurer of the town; and in case such finder shall neglect to pay the same on demand after the expiration of the time aforesaid, the same may be sued for and recovered by the said treasurer in the name of the town.

Penalty on finder for neglect to give notice, &c., where value exceeds three dollars.

SEC. 14. If any finder of lost money or goods, of the value of three dollars or upwards, shall neglect to give notice of the same, and otherwise to comply with the provisions of this chapter, he shall be liable for the full value of such money or goods, one-half to the use of the town, and the other half to the person who shall sue for the same; and shall also be responsible to the owner for such lost money or goods.

CHAPTER 37.

OF THE DISPOSITION OF UNCLAIMED PROPERTY.

Description of property received by certain persons as consignees or bailees to be entered on book.

SECTION 1. Whenever any personal property shall be consigned to, or deposited with any forwarding merchant, wharf keeper, warehouse keeper, tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him, a description of such property, with the date of the reception thereof.

When and how owner to be notified of reception of property.

SEC. 2. If such property shall not have been left with such consignee or bailee, for the purpose of being forwarded, or disposed of according to directions received by such consignee or bailee, at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him and deposited in a post office, of the reception of such property.

If property not claimed and taken away within one year may be sold.

SEC. 3. If any such property shall not be claimed and taken away, within one year after the time it shall have been so received, the person having possession thereof, may at any time thereafter proceed to sell the same in the manner provided in this chapter.

How notice of sale to be given.

SEC. 4. Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there be one, published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in an adjoining county; the last publication of such notice shall be at least eighteen days previous to the time of sale.

Proceedings if owner do not appear and take away property upon notice.

SEC. 5. If the owner or person entitled to such property, shall not take the same away, and pay the charges thereon, after sixty days' notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same town an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown.

Inventory to be made, and justice to order property sold.

SEC. 6. Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order under his hand, that the property therein described be sold by any constable of the city or town where the same shall be, at public auction.

Constable to give notice and sell property at auction.

SEC. 7. It shall be the duty of the constable receiving such inventory and order, to give ten days' notice of the sale, by posting up written notices thereof in three or more public places in such city or town, and to sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under executions from justices courts.

Constable to make return to justice.

SEC. 8. Upon completing the sale, the constable making the same shall indorse upon the order aforesaid, a return of his proceedings thereon, and return the same to the justice, together with the inventory, and the proceeds of the sale after deducting his fees.

Justice to pay charges, and pay the balance to county treasurer and deliver statement, &c.

SEC. 9. From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge, if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges and expenses paid to each person.

Treasurer to enter amount received and file statement.

SEC. 10. The county treasurer shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement so delivered to him by the justice.

Owner may receive amount deposited within five years.

SEC. 11. If the owner of the property sold, or his legal representatives, shall at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer, of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him.

If not claimed within five years, same to belong to county.

SEC. 12. If the amount so deposited with any county treasurer shall not be claimed by the owner thereof, or his legal representatives, within the said five years, the same shall belong to the county, and may be disposed of as the county board of supervisors may direct.

When and how perishable property or in a state of decay may be sold.

SEC. 13. Property of a perishable kind, and subject to decay by keeping, consigned or left in the manner before mentioned, if not taken away within thirty days after it shall be left, may be sold by giving ten days' notice thereof; the sale to be conducted, and the proceeds of the same to be applied in the manner before provided in this chapter: Provided, that any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in section six of this chapter.

Fees of justices and constables under this chapter.

SEC. 14. The fees allowed to any justice of the peace under the provisions of this chapter, shall be one dollar for each days' service, and to any constable the same fees as are allowed by law for sales upon an execution, and ten cents per folio for making an inventory of property.

CHAPTER 38.

OF MARKS AND BRANDS, AND FILING CHATTEL MORTGAGES.

SECTION 1. Of marks and brands.
3. Of filing chattel mortgages.

Of Marks and Brands.

Town clerk on application to record marks and brands

SECTION 1. It shall be the duty of the town clerk of each town, on the application of any person residing in such town, to record a description of the marks or brands with which such person may be desirous of marking his horses, cattle, sheep or hogs; but the same description shall not be recorded for more than one resident of the same town.

Penalty for using mark or brand of another, for marking horses, &c., of another, and for destroying or altering mark.

SEC. 2. If any person shall wilfully mark any of his horses, cattle, sheep, or hogs, with the same mark or brand previously recorded by any resident of the same town, and while the same mark or brand shall be used by such resident, the person so offending shall forfeit, for every such offence, five dollars, to be recovered before any justice of the peace of such county; if any person shall wilfully mark or brand the horses, cattle, sheep, or hogs, of any other person, with his own brand or mark, the person so offending, shall forfeit for every such offence, ten dollars, to be recovered before any justice of the peace of the proper county; and if any person shall wilfully destroy or alter any mark or brand upon any horses, cattle, sheep, or hogs, the property of another, the person so offending shall on conviction, thereof, before any justice of the peace, forfeit and pay, for every such offence, a sum not exceeding ten dollars, and shall moreover pay to the party injured double damages.

Of filing chattel mortgages.

Chattel mortgages, where and how filed, &c

SEC. 3. Any mortgage of personal property, or a copy thereof, may be filed in the office of the clerk of any town or city where the mortgagor executing the same resides; or in case he is a non-resident of the state, then in the office of the clerk of the town or city where the property mortgaged may be at the time of executing such mortgage; and such clerk shall endorse on such instrument or copy, the time of receiving the same, and shall keep the same in his office for the inspection of all persons; and such mortgages, so filed, shall be as valid as if the same had been recorded in the office of the register of deeds.

Town clerk to enter names of parties in a book, &c.

SEC. 4. Such clerk shall also enter in a book to be provided by him for that purpose, the names of all the parties to such instruments, arranging the names of the mortgagors alphabetically, and shall note therein the time of filing each instrument or copy.

When mortgage to expire unless affidavit made and annexed thereto.

SEC. 5. Every such mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing of the same or a copy thereof, unless within thirty days next preceding the expiration of the year, the mortgagee, his agent or attorney, shall make, and annex to the instrument, or copy on file as aforesaid, an affidavit, setting forth the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned, upon which affidavit the clerk shall indorse the time when the same was filed.

Effect of affidavit, how long to continue; new one to be filed.

SEC. 6. The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid, as against subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when any such mortgage would otherwise cease to be valid as aforesaid, a similar affidavit may be filed and annexed as provided in the preceding section, and with the like effect.

Effect of certified copy of mortgage in evidence.

SEC. 7. A copy of any such instrument, or of any copy thereof, so filed as aforesaid, including any affidavits annexed thereto in pursuance of this chapter, certified by the clerk in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument, copy, or affidavit, was received and filed, according to the indorsement of the clerk thereon, and of no other fact.

Fees of clerk.

SEC. 8. Every such clerk shall be entitled to receive the following fees for services under the provisions of this chapter:

For recording any mark or brand, twelve and a half cents;

For giving a certificate of the same, twelve and a half cents;

For filing each instrument, copy, or affidavit, six cents;

For entering the same in a book, six cents;

And the like fees for certified copies of such instruments, copies, or affidavits, as are allowed by law for copies of records kept by registers of deeds.

CHAPTER 39.

OF UNAUTHORIZED BANKING.

Corporations not to exercise certain banking powers unless authorised.

SECTION 1. No incorporated company, without being authorized by law, shall be in any manner concerned in receiving deposits, making discounts, or issuing notes or other evidences of debt, to be loaned or put into circulation as money; and any director or other agent or officer of any incorporated company, who shall violate any provision of this section, shall forfeit one thousand dollars.

No person or corporation, unless authorised, shall issue or put in circulation as money, bills, notes, &c

Sec. 2. No person, or association of persons, or body corporate, except such bodies corporate as are expressly authorized by law, shall issue any bills or promissory notes or other evidences of debt, for the purpose of loaning them, or putting them in circulation as money, unless thereto especially authorized by law; and every person, and every member of a corporation, who shall violate either of the provisions of this section, shall forfeit one thousand dollars.

No bill, note, &c, for less than one dollar, or payable in any other thing than lawful money, to be circulated as money.

Sec. 3. No person shall pay, give or receive in payment, or in any way circulate, or attempt to circulate as money, any bank bill, or promissory note, check, draft, or other evidence of debt, which shall purport to be for the payment of a less sum than one dollar, or payable otherwise than in the lawful money of the United States; and any person who shall wilfully violate any of the provisions of this section, shall forfeit one hundred dollars.

Penalties prescribed in this chapter how recovered and where paid.

Sec. 4. The penalties prescribed in this chapter, shall be recovered by suit in the name of the board of supervisors of the county in which the offence is committed, to be prosecuted by the district attorneys of said counties respectively; and the same shall be paid into the county treasury.

CHAPTER 40.

OF THE PROTECTION OF HEDGES, FENCES, FRUIT AND ORNAMENTAL TREES, &c.

The owner or occupant of land bordering on public road may cultivate a hedge or live fence, &c.

Section 1. Whenever any owner or owners, occupant or occupants of any land or lands, bordering upon any public road or highway, excepting a street or alley in a town or village, through which any public road or highway may pass, may wish to plant and cultivate any hedge or live fence, along the margin of his, her or their lands, it shall be lawful for any such person or persons, to set or plant any such hedge or live fence, precisely on the line of the road or public highway; and also to place on the margin of such road a protection fence, not to occupy more than six feet of the margin or edge of such road. And such protection fence, when placed opposite any live fence or hedge actually set or planted, shall be permitted by the overseer of highways, and all other persons, to remain for the term of seven years; provided, that the supervisors of any town may grant permission in writing to the owner or owners of any hedge or live fence to continue such protection fence any term of time which they may deem necessary.

Penalty on person who shall injure such hedge, or any fence, or open or let down any gate or bars.

Sec. 2. If any person or persons shall wantonly or maliciously cut through, dig up, or injure any hedge, or live fence, or throw, put or lay down, or prostrate any fence inclosing any orchard, pasture, meadow, garden or other field or inclosure, in which any grain or other vegetables are cultivated, the property of, or lawfully occupied by any other person or persons, or shall wantonly or maliciously open, let down, throw down, or prostrate any gate or bars, belonging to any such inclosure or field, and leave any such fence, bars or gate down, prostrate or open, every such person or persons shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days, or both, at the discretion of the court.

Penalty for injuring or destroying fruit or ornamental trees, roots, plants, &c.

SEC. 3. And if any person or persons, shall wilfully or maliciously, and without lawful authority, cut down, root up, sever, injure or destroy any fruit or ornamental trees, cultivated root or plant, fruit, or other vegetable production, standing or growing in, or being attached to the lands of others, or shall wilfully and without lawful authority cut down, root up, destroy, or injure any fruit or ornamental trees or shrubbery, planted or growing in any street, lane or alley, or public grounds, in any city or incorporated town, every such person so offending, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine of not more than one hundred dollars, or by imprisonment in the county jail, not exceeding three months or both, at the discretion of the court, and shall moreover be liable in damages to the party injured.

Name of one joint tenant sufficient to be stated in complaint for such trespass.

SEC. 4. In case of prosecution for any of the above offences, if the land there referred to shall be owned or occupied in common by two or more tenants, the complaint shall be deemed sufficient, if any one or more of such tenants in common shall be named therein.

When and before whom all prosecutions under this chapter to be commenced, and where fines to be paid.

SEC. 5. All prosecutions under this chapter, shall be commenced within one year from the time any such offence shall have been committed, before some justice of the peace of the county wherein the same shall have been committed, and all fines collected under the provisions of this chapter, shall be paid into the treasury of the county where the offence shall have been committed, for the use of the common schools of said county.

CHAPTER 41.

OF RECORDING TOWN PLOTS.

Towns to be surveyed and plotted.

SECTION 1. When any person wishes to lay out a town in this state, or an addition or subdivision of out lots, such person shall cause the same to be surveyed, and a plot thereof made, which shall particularly describe and set forth all the streets, alleys commons or public grounds, and all in and out lots or fractional lots within, adjoining or adjacent to said town; giving the names, widths, courses, boundaries and extent of all such streets and alleys.

Lots how numbered, &c.

SEC. 2. All the in lots intended for sale shall be numbered in progressive numbers, or by the squares in which they are situated, and their precise length and width shall be stated on said plot or map; and out lots shall not exceed ten acres in size, and shall in like manner be surveyed and numbered, and their precise length and width stated on the plot or map, together with any street, alleys or roads which shall divide or border on the same.

Stones to be placed at corners of lots, &c.

SEC 3. The county supervisors, proprietor or proprietors of the town, addition or subdivision of out lots, by themselves or agents, shall at the time of surveying and laying the same, plant and fix at a corner of the public ground, or at the corner of a public lot, if any there be, and if there be none, then at the corner of some one of the in lots in the town, and at the corner of each out lot, a good and sufficient stone of such size and dimensions, and in such manner as the surveyor shall direct, for a corner from which to make future surveys, and the point or points where the same may be found, shall be designated on the plot or map.

Plot, &c, to be acknowledged and recorded.

SEC. 4. The plot or map after having been completed, shall be certified by the surveyor; and the officers and every person or persons whose duty it may be to comply with the foregoing requisisition, shall, at or before the time of offering such plot or map for record, acknowledge the same before any person authorized to take the acknowledgment of deeds. A certificate of such acknowledgment, shall by the officer taking the same be indorsed on the plot or map, which certificate of the survey and acknowledgment shall also be recorded, and form a part of the record.

Title to land marked on plot, &c., as donation to the public, &c vested in public.

SEC. 5. When the plot or map shall have been made out and certified, acknowledged and recorded as required by this chapter, every donation or grant to the public, or any individual or individuals, religious society or societies, or to any corporation or bodies politic, marked or noted as such on said plot or map, shall be deemed in law and in equity, a sufficient conveyance to vest the fee simple of all such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes, a general warranty against such donor or donors, their heirs and representatives, to the said donee or donees, grantee or grantees, for his, her or their use, for the uses and purposes therein named, expressed and intended, and no other use or purpose whatever; and the land intended to be for the streets, alleys, ways, commons or other public uses in any town or city, or addition thereto, shall be held in the corporate name thereof, in trust to, and for the uses and purposes set forth and expressed or intended.

Plot where to be recorded.

SEC. 6. If the county in which said town or addition is situated shall not be organized, then and in that case the plot or map shall be recorded in the register's office of that county to which the county in which said town is situated, shall at the time be attached for judicial purposes.

Plots heretofore laid off, to be recorded.

SEC. 7. When any town, addition or subdivision of out lots has been heretofore laid out, and lots sold in this state, either by county agents, commissioners or other persons, and a plot or map of the same has not been acknowledged and recorded in conformity to the acts heretofore in force, it shall be the duty , and it is hereby required of the present county supervisors or a majority of them in such county, or other person or persons, proprietor or proprietors, who have laid out the same, or his, her or their legal representatives to have the same fairly, fully and clearly made out, certified and acknowledged and recorded in the proper county, in the form and manner required by this chapter; noticing, and particularly describing the donation of land or otherwise, to individual societies, bodies politic, or for common or public uses: Provided, that if the lots shall have been differently numbered, and sales made, and they cannot well be changed; they shall be returned, as originally stated; but in all other respects, the plot or map shall conform to the requisitions of this chapter.

Fees of surveyor and register.

Sec. 8. The surveyor who shall lay out, survey and plot any town, or addition, shall be entitled to receive twenty-five cents for each and every in and out lot the same may contain, and the register of the county recording the same, shall receive the sum of one cent for each and every lot as aforesaid; the said plot and survey to be by him transcribed or copied into a book to be provided for that purpose.

Penalty for selling or leasing lots until the provisions of this chapter are complied with.

Sec. 9. If any person or persons shall dispose of, offer for sale, or lease for any time, any out or in lots, in any town, or addition to any town or city, or any part thereof, which shall hereafter be laid out, until all the foregoing requisitions of this chapter shall have been complied with, every person so offending shall forfeit and pay the sum of twenty-five dollars for each and every lot, or part of a lot, sold or disposed of, leased or offered for sale.

Penalty on persons whose duty it is to comply with requisitions of this chapter for neglect.

Sec. 10. If any county officers, or other person or persons, whose duty it is to comply with any of the requisitions of this chapter shall neglect or refuse so to do, he or they shall forfeit and pay a sum of not less than ten, nor more than one hundred dollars, for each and every month he or they shall delay a compliance.

How penalties under this chapter to be recovered and paid.

Sec. 11. All forfeitures and liabilities which may be incurred and arise under this chapter, shall be prosecuted for and recovered in the name of the county treasurer; and any officer or officers paying over any money to the said treasurer, received under any of the provisions of this chapter, shall take his receipt therefor, and forthwith file the said receipt with the clerk of the board of supervisors; and the said clerk shall charge the amount of said receipt in account against said treasurer, on the books of the county supervisors.

Circuit court may alter or vacate town

Sec. 12. The circuit courts are hereby authorized and empowered, on application made by the proprietor or proprietors of any town within their proper county, to alter or vacate the same, or any part thereof.

Notice of application to alter or vacate plot to be given.

Sec. 13. If any proprietor or proprietors of a town shall be desirous of altering or vacating the same, or any part thereof, such proprietor or proprietors shall give notice in writing of such intended application, in at least two of the most public places in the county, wherein such town may be situated, and insert a copy thereof in a newspaper printed or in circulation in said county, at least sixty days prior to the sitting of the court to which he or they intend to make such application.

Proceedings of court upon application.

Sec. 14. If such applicant or applicants shall produce to said court satisfactory evidence that the notice required by the preceding section of this chapter has been given, the court shall proceed to hear and determine said petition, and may alter or vacate said town or any part thereof, and order their proceedings therein to be recorded by their clerk with the records of said court.

TITLE XII.

OF THE REGULATION OF TRADE IN CERTAIN CASES.

CHAPTER 42. Of weights and measures.
43. Of the rates of toll for grinding.
44. Of bills of exchange and promissory notes.
45. Of the interest of money.
46. Of the money of account.

CHAPTER 42.

OF WEIGHTS AND MEASURES.

What to be the public standards of weights and measures.

SECTION 1. The weights and measures, together with the scales and beams, and those made in conformity therewith, which are now, or may hereafter be deposited in the treasury of this state, shall be preserved by the treasurer, and be the public standards.

State treasurer to be state sealer, and his duties as such.

SEC. 2. The treasurer of the state shall be the state sealer of weights and measures, and he shall have and keep a seal, which shall be so formed as to impress the letters "WIS." upon the weights and measures, and scales and beams, to be sealed by him, with which he shall seal all such authorised public standards of weights and measures, and all the weights and measures, and scales and beams to be provided by the several counties, when examined by said treasurer, and found to be in conformity with the standard weights and measures and scales and beams aforesaid.

Board of supervisors to procure for each county set of weights and measures.

To be proved and sealed by state treasurer.

SEC. 3. The board of supervisors of each county for which the same have not already been obtained, shall procure, for the use and at the expense of their county, a complete set of weights and measures, and scales and beams, in exact conformity with those required to be kept in the state treasury; except that the same may be made of such suitable materials as the supervisors may direct, which shall be tried and proved by the said treasurer, and be by him sealed and certified.

County treasurer to be sealer for county, and his duties.

SEC. 4. When so sealed and certified, such weights and measures, scales and beams, shall be deposited with the county treasurer, who shall be the sealer of weights and measures for the county, and the same shall be kept by him as the standard of weights and measures for the county; and the said treasurer shall also provide and keep a seal similar to the seal required to be kept by the state treasurer, with which he shall seal the weights and measures, and scales and beams, to be provided by the several towns.

Every five years county treasurer to cause the standards in his keep-

SEC. 5. Once in every five years, from the first day of January, eighteen hundred and fifty, each county treasurer, for the time being, shall cause the said standards in his keeping to be tried proved and sealed by the state standards, under the direction of the state treasurer.

ing to be proved by state standards.

If county board neglect to provide standards, when the clerk of the board shall provide them.

Sec. 6. If the board of supervisors of any county which has not heretofore provided such standards, shall neglect for six months after the first of January, eighteen hundred and fifty, to provide the same, and cause them to be tried and proved, and sealed as aforesaid, and delivered to the treasurer of the county, it shall be the duty of the treasurer to notify the clerk of the board of supervisors of such neglect, and such clerk shall immediately provide such standards, and cause the same to be tried, proved, sealed and deposited as aforesaid at the expense of his county.

Fees of county treasurer.

Sec. 7. The county treasurer shall be entitled to receive a fee of five cents for the first sealing of every weight, measure, scale or beam, and three cents for every subsequent sealing of the same.

Penalty for neglect of sealer to perform his duty.

Sec. 8. If any sealer of weights and measures shall neglect to perform his duty, as prescribed in this chapter, he shall forfeit for each neglect, the sum of five dollars.

Steelyards may be used, but to be annually proved.

Sec. 9. The vibrating steel-yards, which have heretofore been allowed and used in this state, may continue to be used; but each beam and the poises thereof, shall be annually tried, proved and sealed, by a sealer of weights and measures, like other beams and weights.

100 pounds avoirdupois to be the hundred weight implied in contracts.

Sec. 10 When any commodity shall be sold by the hundred weight, it shall be understood to mean the net weight of one hundred pounds avoirdupois, and all contracts concerning goods or commodities sold by weight, shall be construed accordingly, unless such construction would be manifestly inconsistent with the special agreement of the parties contracting.

Standard weight of commodities sold by the bushel.

Sec. 11. Whenever wheat, rye, Indian corn, oats, barley, clover seed, buckwheat, dried apples or dried peaches, shall be sold by the bushel, and no special agreement as to the measure or weight thereof shall be made by the parties, the measure thereof shall be ascertained by weight, and shall be computed as follows: Sixty pounds for a bushel of wheat or clover seed; fifty-six pounds for a bushel of rye or Indian corn ; thirty-two pounds for a bushel of oats; forty eight pounds for a bushel of barley ; forty-two pounds for a bushel of buckwheat; and twenty-eight pounds for a bushel of dried apples or dried peaches.

The half bushel to be the standard for certain commodities, &c.

Sec. 12. The half bushel, and the parts thereof, shall be the standard measure for charcoal, fruits, and other commodities, customarily sold by heaped measure; and in measuring such commodities, the half bushel, or other smaller measure shall be heaped as high as may be, without special effort or design.

CHAPTER 43.

OF THE RATES OF TOLL FOR GRINDING.

Rates of toll.

SECTION 1. The owners or occupiers of all grist mills in this state, moved by water, shall be entitled to one-eighth part of all wheat, rye, or other grain, ground and bolted, or ground and not bolted, and no more: Provided, however, said owner or occupier shall not be permitted to grind his own grain to the exclusion of other grists, when said mill is used and occupied as a grist mill.

How, and in what order grain to be ground, &c.

SEC. 2. The owner or occupier of any grist mill shall well and sufficiently grind the grain brought to his mill for that purpose in due time, and in the order in which it shall be received, and shall be accountable for the safe-keeping of all grain received in such mill for the purpose of being ground therein, and shall deliver the same when ground, or ground and bolted, as the case may be, with the bag or cask in which it was brought, when demanded; but every owner or occupant of a mill may grind his own grain at any time; and nothing in this section contained shall be construed to compel the owners or occupants of mills to grind for distilling, or for sale or merchant work.

Not compelled to *grind for distilling or merchant work.*

SEC. 3. Nothing contained in the last section shall be so construed as to charge the owner or occupant of any mill for the loss of any grain, bag, or cask, which shall happen by robbery, fire, or inevitable accident, without the fault of such owner or occupant, his agents, or servants.

When owner of mill not liable for loss of grain, &c.

SEC. 4. Every miller, or owner or occupant of a grist mill, who shall not well and sufficiently grind any grain as aforesaid, or not in due turn as the same shall be brought, or who shall exact or take more toll than is herein allowed, shall, in every such case, be liable to a fine of not less than three, nor more than twenty dollars, and shall also be liable to the party injured in double the actual damages sustained by him.

Penalty on owner or miller for breach of the provisions of this chapter.

CHAPTER 44.

OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

Promissory notes and effect of same.

SECTION 1. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person or his order, or to the order of any other person, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed; and shall have the same effect, and be negotiable in like manner, as inland bills of exchange, according to the custom of merchants.

Effect of notes signed by agent.

SEC. 2. Every note signed by the agent of any person under a general or special authority, shall bind such person, and have the same effect, and be negotiable, as provided in the preceding section.

Payees, indorsees and holders, how to maintain suits.

Sec. 3. The payees and indorsees of every such note payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, in like manner as in cases of inland bills of exchange, and not otherwise.

If payable to order of maker or fictitious person, what shall be their effect.

Sec. 4. Such notes made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated, by the maker, have the same effect, and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to bearer.

Days of grace when allowed.

Sec. 5. On all bills of exchange, payable at sight, or at a future day certain, within this state, and on all negotiable promissory notes, orders and drafts payable at a future day certain, within this state, in which there is not an express stipulation to the contrary, grace shall be allowed, except as provided in the following section, in like manner as it is allowed by the custom of merchants, on foreign bills of exchange, payable at the expiration of a certain period after date or sight.

When not allowed.

Sec. 6. The provisions of the last preceding section, shall not extend to any bill of exchange, note or draft payable on demand.

Acceptance to be in writing.

Sec. 7. No person within this ssate, shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

What damages to be allowed on foreign bills of exchange

Sec. 8. Whenever any bill of exchange, drawn or indorsed within this state, and payable without the limits of the United States, shall be duly protested for non-acceptance or non-payment, the party liable for the contents of such bill, shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand, and damages at the rate of five per cent upon the contents thereof, together with interest on the said contents, to be computed from the date of the protest; and said amount of contents, damages and interest, shall be in full of all damages, charges and expenses.

Damages on inland bills of exchange drawn on persons in adjoining state.

Sec. 9. If any bill of exchange drawn upon any person or body politic or corporate, out of this state, but within some state or territory of the United States, adjoining to this state, for the payment of money, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill with legal interest, according to its tenor, and five per cent damages, together with costs and charges of protest.

Same when drawn on persons not in adjoining state.

Sec. 10. If any bill of exchange drawn upon any person, or body politic or corporate, out of this state, but within the United States, or territories thereof, and not adjoining to this state, for the payment of money, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill with legal interest, according to its tenor, and ten per cent damages, together with costs and charges of protest.

CHAPTER 45.

OF THE INTEREST OF MONEY.

Rate of interest.

SECTION 1. Any rate of interest agreed upon by parties in contract, specifying the same in writing, shall be legal and valid.

When seven per cent. to be the legal rate.

SEC. 2. When no rate of interest is agreed upon or specified in a note, or other contract, seven per cent per annum shall be the legal rate.

Contravening acts repealed.

SEC. 3. All acts and parts of acts, contravening the provisions of this chapter, are hereby repealed.

CHAPTER 46.

OF THE MONEY OF ACCOUNT.

Money of account, and how public accounts, &c., to be kept

SECTION 1. The money of account of this state shall be the dollar, cent, and mill; and all accounts in the public offices, and other public accounts, and all proceedings in courts, shall be kept and had in conformity to this regulation.

Accounts, &c., in other currency not void, &c.

SEC. 2. Nothing contained in the preceding section shall vitiate or affect any account, charge or entry, originally made, or any note, bond, or other instrument, expressed in any other money of account; but the same shall be reduced to dollars, or parts of a dollar, as herein before directed, in any suit thereupon.

Judgments to be computed in dollars and cents, and fractions of a cent rejected.

SEC. 3. In all judgments or decrees, rendered by any court of justice, for any debt, damages, or costs, and in all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions, and no judgment or other proceeding shall be considered erroneous for such omissions.

TITLE XIII.

Of Corporations.

Chapter 47. Of religious societies.
48. Of cemetery associations.
49. Of libraries and lyceums.
50. Of the incorporation of plank and turnpike road companies.
51. Of corporations for manufacturing, mining, lumbering, agricultural, mechanical and chemical purposes.
52. Of the incorporation of villages.
53. Of electric telegraph lines.
54. General provisions relating to corporations.

CHAPTER 47.

OF RELIGIOUS SOCIETIES.

Persons belonging to religious societies may elect trustees.

Section 1. It shall be lawful for all persons of full age, belonging to any church, congregation, or religious society, not already incorporated, to assemble at the church, or meeting-house, or other place where they statedly attend for divine worship, and by a plurality of votes to elect any number of discreet persons of their church, congregation, or society, not less than three, nor more than nine in number, as trustees, to take charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof.

Presidents of corporations; who entitled to vote.

Sec. 2. It shall be lawful for any such church, congregation or religious society to choose their minister to be the president of the said corporation, and of their meetings, by a vote as aforesaid; and at the election provided for in this chapter, every person of full age, who has statedly worshipped with such church, congregation, or society, and has been formerly considered as belonging thereto, shall be entitled to a vote.

Notifying elections.

Sec. 3. The minister of such congregation or society, or in case of his death or absence, one of the elders or deacons, church wardens or vestrymen thereof, and for the want of such officers, any other person, being a member or stated hearer in such church, congregation, or society, shall publicly notify the congregation of the time when, and the place where the said election shall be held, at least fifteen days before the day of election; and such notification shall be given for two successive sabbaths, on which such church, congregation, or society, shall statedly meet for public worship, preceding the election.

Who to preside, certificate.

Sec. 4. Any two of the elders, deacons, church wardens or vestrymen of such church, congregation, or society, or, if such officers shall not be present, then any two voters present, to be nominated by a majority of the voters, shall preside at such election, receive the votes and determine the qualification of voters; and they shall, immediately after the election, certify under their hands and seals the names of the persons elected to serve as trustees; in which certificate, the name by which the said trustees and their successors in office shall forever thereafter be called and known, shall be particularly mentioned and specified.

Certificate to be acknowledged and recorded.

Sec. 5. Such certificate shall be acknowledged by the persons making the same, or proved by a subscribing witness thereto before some officer authorized to take the acknowledgment of deeds, and recorded, together with the certificate of such acknowledgment or proof, by the clerk of the county within which the church or place of worship of such congregation shall be situated, in a book to be provided by him for that purpose, who shall be entitled to receive seventy-five cents for such recording; and thereafter such trustees and their successors shall be a body corporate by the name expressed in such certificate.

Trustees to be a body corporate.

Powers of trustees.

Sec. 6. Such trustees may have a common seal, and may alter the same at pleasure, and they may take into their possession and custody all the temporalities of such church, congregation, or society, whether the same shall consist of real or personal estate, and whether the same may have been given, granted or devised, directly or indirectly, to such church, congregation, or society, or to any other person or persons for their use.

Ib.

Sec. 7. Such trustees may also, in their corporate name, sue and be sued in all courts and places, and they may recover and hold all the debts, demands, rights and privileges, all churches, buildings, burying places, and all the estate and appurtenances belonging to such church, congregation or society, in whatsoever manner the same may have been acquired, or in whose hands soever the same may be held, as fully and amply as if the right and title thereto had been originally vested in the said trustees; and they may hold other real or personal estate, and demise, lease and improve the same; but the whole of such estate, real and personal, shall not exceed the yearly value or income of three thousand dollars.

Ib.

Sec. 8. The said trustees shall also have authority to alter and repair their churches and meeting houses, and under the direction of the society or congregation, to erect churches and meeting houses, and dwelling houses for their ministers, and other buildings, for the use of their church, congregation or society.

Ib.

Sec. 9. They shall also have authority to make rules and orders for managing the temporal affairs of such church, congregation, or society, and to dispose of all moneys belonging thereto, and to order and regulate the renting of pews or slips in their churches and meeting-houses, and the perquisites for the breaking of the ground in the cemetery or church yard, and in the said churches and meeting houses, for burying the dead.

To appoint clerk, treasurer and collector.

Sec. 10. They may appoint a clerk and treasurer of their board, and a collector to collect and receive their rents and revenues, and may regulate the fees to be allowed to such clerk, treasurer and collector, and may remove them and appoint others in their stead at pleasure; and such clerk shall enter all rules and orders made by such trustees, and payments ordered by them, in a book to be procured by them for that purpose.

Duty of clerk.

Two trustees may call meeting.

Quorum.

Sec. 11. Any two of the trustees may at any time call a meeting of the trustees; and a majority of them being lawfully convened, shall be competent to do and perform all matters and things which such trustees are authorized to do and perform.

Classification of trustees.

Sec. 12. The said trustees shall hold their offices for three years; and immediately after their first election, as hereinbefore provided, the said trustees shall be divided by lot into three classes, numbered one, two, and three; and the seats of the first class shall be vacated at the end of the first year, of the second class at the end of the second year, and of the third class at the end of the third year, to the end that as near as may be, one-third part of the whole number of trustees may be annually chosen.

Notice of expiration of term of trustee, and of election of successor.

Sec. 13. It shall be the duty of the clerk of said trustees, at least one month before the expiration of the office of any of the said trustees, to notify the same in writing to the minister, or in case of his death or absence, to the elders or church wardens, and if there be no elders or church wardens, then to the deacons or vestrymen of any such church, congregation or society, specifying in such notice the names of the trustees whose office will expire; and the minister, or other officers receiving such notice, shall, in manner aforesaid, notify the members of such church, congregation or society of such vacancies, and appoint the time and place for the election to supply the same.

Conducting election and filling vacancies.

Sec. 14. Such election shall be held at least six days before vacancies shall happen as aforesaid, and all such subsequent elections shall be held and conducted by the same persons, and in the same manner as hereinbefore provided for the first election; and in case any vacancy shall happen by the death of a trustee, his refusal to act, or removal from the society before his term of office expires, or otherwise, notice thereof shall be given as aforesaid, and an election shall be held, and another trustee chosen in his stead for the remainder of such term.

Qualification of voters after first election.

Sec. 15. No person belonging to any such church, congregation or society, incorporated under the provisions of this chapter, shall be entitled to vote at any election after the first, until he shall have been an attendant on public worship in such church, congregation or society, at least six months before such election, and shall have contributed to the support of such church, congregation or society, according to the usages and customs thereof.

Clerk to keep register of stated hearers, &c.

Sec. 16. The clerk of the trustees shall keep a register of the names of all such persons as shall desire to become stated hearers in the said church, congregation or society, and shall therein note the time when such request was made, and the said clerk shall attend all subsequent elections, in order to test the qualifications of such voters, in case they shall be questioned.

Majority of society to fix compensation of minister.

Sec. 17. Nothing in this chapter contained, shall be construed to give to such trustees the power to fix or ascertain the salary or compensation to be paid to any minister, but the same shall be ascertained and fixed by a majority of such society entitled to vote at the election of trustees.

When circuit court may order sale of property.

Sec. 18. It shall be lawful for the circuit court for the county in which any such religious corporation shall have been constituted, on the application of such corporation, if such court shall deem it proper, to make an order for the sale of any real estate belonging to such corporation, and to direct the application of the moneys arising therefrom, to such uses as the said corporation, with the approbation of said court, shall conceive to be for the interest of such corporation.

Notice of application for order

Sec. 19. At least thirty days previous notice of any such application to the circuit court shall be given, by publishing the same in some newspaper published in the county, if one be published therein, and if not, by posting up notices in three or more public places in such county.

Churches, &c., heretofore incorporated to be established.

Sec. 20. Every church, congregation or religious society, heretofore incorporated in pursuance of law, and not since dissolved, shall be, and is hereby established and confirmed; and in case of the dissolution of any such corporation, or of any corporation hereafter to be formed in pursuance of the provisions of this chapter, for any cause whatever, the same may be incorporated under the provisions of this chapter at any time within six years after such dissolution; and thereupon all the estate, real and personal, formerly belonging to the same, and not lawfully disposed of, shall vest in such corporations as if there had been no such dissolution.

If dissolved may be re-incorporated.

Land, &c., conveyed to trustees how held.

Sec. 21. All lands, tenements and hereditaments, that have been or may hereafter be lawfully conveyed by devise, gift, grant, purchase or otherwise, to any persons as trustees, in trust for the use of any religious society organized, or which may hereafter be organized within this state, either for a meeting house, burying ground, or for the residence of a preacher, shall descend, with the improvements, in perpetual succession to, and shall be held by such trustees, in trust for such society.

Appointment of trustees in certain cases.

Sec. 22. Whenever by the constitution, rules or usages of any particular church or religious denomination, trustees are required to be appointed by any minister, presiding elder, or other officer or officers of such church or denomination, it shall be the duty of such minister, presiding elder, or other officer or officers, to give to such trustees a certificate of their appointment, under the hand and seal of the person making the same, specifying the name by which such trustees and their successors shall forever thereafter be called and known, which certificate shall be acknowledged, or proved, and recorded as hereinbefore directed; whereupon such trustees and their successors appointed in the same manner, shall be a body corporate, by the name expressed in such certificate, with all the rights, powers and privileges of other religious corporations constituted according to the provisions of this chapter.

When minister, deacons, &c., to be trustees, &c., and their powers.

Sec. 23. Whenever by the constitution, rules and usages of any particular church or religious denomination, the minister or ministers, elders and deacons, or other officers elected by any church or congregation, according to such constitution, rules or usages, are thereby constituted the trustees of such church or congregation, it shall be lawful for such minister, or ministers, elders and deacons, or other officers, to assemble together, and execute under their hands and seals a certificate, stating therein the name by which they and their successors in office, shall forever thereafter be called and known, which certificate shall be acknowledged or proved and recorded as hereinbefore directed; whereupon such persons and their successors in office, shall be a body corporate by the name expressed in such certificate, with all the rights, powers and privileges of other religious corporations, constituted according to the provisions of this chapter.

Churches, &c, exempt from taxation.

SEC. 24. Every church, parsonage, and school house belonging to any religious society, with the land belonging thereto, not to exceed in all three acres in any one town, village or township, or if in a city, not to exceed one lot for each of the said buildings, shall not be subject to taxation for any purpose except for its own improvement.

CHAPTER 48.

OF CEMETERY ASSOCIATIONS.

How organized, and trustees elected.

SECTION 1. Any number of persons residing in any county in this state, not less than seven, who shall desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery, or place for the burial of the dead, may meet at such time and place as they or a majority of them may agree, and appoint a chairman and secretary by the vote of a majority of the persons present at the meeting; and may proceed to form an association by agreeing on a corporate name, by which the association shall be known, and by determining upon the number of trustees to manage the affairs of the association, which number shall not be less than three, nor more than nine; and thereupon they may proceed to elect by ballot the number of trustees so determined upon.

Trustees to be classified.

SEC. 2. The chairman and secretary of such meeting shall, immediately after such election, divide the trustees by lot, into three classes; those in the first class to hold their office one year, those in the second class two years, and those in the third class three years; but the trustees of each class may be re-elected, if they shall possess the qualifications hereinafter mentioned; such meeting shall also determine on what day in each year, the future annual election of trustees shall be held.

Chairman and secretary to make certificate, and same to be recorded.

SEC. 3. The chairman and secretary of such meeting shall, within three days after the holding of the same, make a written certificate, which shall state the names of the associates who attended such meeting; the corporate name of the association determined upon by the majority of the persons who met; the number of trustees fixed upon to manage the concerns of the association; the names of the trustees chosen at the meeting, and their classification, and the day of the year fixed upon for the annual election of trustees; such certificate shall be signed by the said chairman and secretary, and acknowledged by them before some officer of the county authorized to take the acknowledgment of deeds, and they shall cause such certificate, so acknowledged, to be recorded in the register's office of the county in which the meeting was held.

When association incorporated, and its powers.

Sec. 4. Whenever such certificate shall have been duly acknowledged and recorded as aforesaid, the association mentioned therein shall be deemed legally incorporated, and shall have the general powers and privileges, and be subject to the liabilities and restrictions, as provided by laws of this state in respect to incorporations.

May make by-laws.

Sec. 5. Such associations shall have power to make such by-laws as are necessary to effect the objects of its organization, not inconsistent with the laws of this state.

Powers of trustees.

Sec. 6. The affairs and property of such association shall be managed by the trustees, a majority of whom shall form a board for the transaction of business; the trustees shall annually appoint from among their number a president, and shall also appoint a secretary and treasurer, who shall hold their places during the pleasure of the board, and the trustees may require the treasurer to give security for the faithful performance of the duties of his office.

Power of association to hold real and personal estate, &c.

Sec. 7. Any association incorporated agreeably to the provisions of this chapter, may take by purchase or gift, and hold, within the county in which the certificate of their incorporation is recorded, not exceeding forty acres of land, to be held and occupied exclusively for a cemetery, for the burial of the dead; such land, or such portion thereof as may from time to time be required for that purpose, shall be surveyed, and divided into lots of such size as the trustees may direct, with such avenues, alleys, and walks, as the said trustees may deem proper, and a map or maps of such surveys shall be filed in the register's office of the county in which the lands shall be situated; such association may also purchase or take by gift, and hold, personal property to an amount not exceeding one thousand dollars, and may sell the same, and apply the proceeds thereof to the purposes mentioned in section thirteen of this chapter, and no other.

Lots how to be sold.

Sec. 8. After such map shall have been filed in the register's office as aforesaid, the trustees may sell and convey the lots as designated on such map, upon such terms, and subject to such conditions and restrictions, to be inserted in, or annexed to the conveyances, as the said trustees shall prescribe; every conveyance of any such lot shall be expressly for burial purposes and no other, and shall be in the corporate name of the association, signed by the president and treasurer thereof.

Election of trustees, and their term of office.

Sec. 9. The annual election for trustees, to supply the place of those whose term of office expires, shall be holden on the day mentioned in the certificate of incorporation, and at such hour and place as the trustees shall direct; the trustees chosen at any election after the first, shall hold their offices for three years, and until others shall be chosen to succeed them; such election shall be by ballot, and every person who shall be the proprietor of a lot in the cemetery of the association, or if there be more than one proprietor of any such lot, then such one of the proprietors as the majority of the joint proprietors shall designate to represent such lot, may vote at such election, and the persons receiving the highest number of votes given at such election shall be declared elected trustees.

Who may be trustees; may fill vacancies.

Notice of election.

SEC. 10. In all elections after the first, the trustees shall be chosen from among the proprietors of lots in such cemetery; and the said trustees shall have power to fill any vacancy in their number, occurring during the term of office for which any trustee was elected. Public notice of every annual election shall be given, in such manner as the by-laws of the association shall prescribe.

When special election may be held.

SEC. 11. If the annual election shall not be held, on the day fixed in the certificate of incorporation, the trustees shall have power to appoint another day, not more than sixty days thereafter, and shall give public notice of the time and place; at which time the election may be held with like effect as if holden on the day fixed in the said certificate; and the terms of office of the trustees chosen at such election, shall expire at the same time they would have done, had they been chosen on the day fixed in the said certificate of incorporation.

Trustees to make annual report.

SEC. 12. The trustees at each annual meeting, shall make a report in writing, containing a statement of their doings and of the affairs of the association, and an account of the receipts and expenditures during the year preceding.

To what purposes proceeds to be applied.

SEC. 13. The proceeds arising from the sale of lots in such cemetery, shall be applied to the payment of any debts incurred by said association in the purchase of cemetery grounds and property, in fencing, improving, and embellishing such grounds, and avenues leading thereto, and in defraying the necessary expenses in the management and care of the same, and for no other purpose.

Wilful trespass in cemetery a misdemeanor, &c.

SEC. 14. Any person who shall wilfully destroy, mutilate, injure or remove, any tomb, monument, grave stone, building or other structure, placed in any cemetery, or any fence, railing, or other work, for the protection or ornament thereof, or who shall wilfully destroy or injure any tree, shrub or plant, within the limits of such cemetery, incorporated under this chapter, shall be deemed guilty of a misdemeanor, and shall also be liable in an action, to be brought in the name of the association, for the payment of all damages by him occasioned; or any proprietor of a lot in such cemetery, may sue for any injury done upon any lot owned by him.

Cemetery lands and lots to be free from taxation and execution; no street to be laid through same.

SEC. 15. The cemetery lands and property of any association formed pursuant to this chapter, shall be exempt from all public taxes and assessments, and shall not be liable to be sold on execution, or to be applied in payment of debts of any individual proprietors; but the proprietors of lots in such cemetery, their heirs or legal representatives, may hold the same exempt therefrom, so long as the same shall remain appropriated to the use of a cemetery, and during that time, no street or road shall be laid through such cemetery, or any part of the lands held by such association, for the purposes aforesaid, without the consent of the trustees of such association.

When lots to be inalienable; regulations concerning burial.

SEC. 16. Whenever the lands of any such association shall be laid out into lots, and such lots or any of them shall be transferred to individual proprietors, and after there shall have been an interment in any lot so transferred, such lot, from the time of such first interment, shall forever thereafter be inalienable, and shall upon the death of the proprietor, decend to the heirs of such proprietor forever; but any one or more of such heirs may release to any other of said heirs, his, her, on their interest in the same; a copy of such release shall be filed with the town clerk of the town, or with the register of the city, within which the said cemetery shall be situated; the body of any deceased person shall not be interred in any such lot, unless it be the body of a person having at the time of such decease an interest in such lot, or the relative of some person having such interest, or the wife of such person, or her relative, except by the consent of all persons having an interest in such lot.

CHAPTER 49.

OF LIBRARIES AND LYCEUMS.

How library associations formed.

SECTION 1. Any seven or more proprietors of a library may form themselves into a corporation, under such corporate name as they may adopt, for the purpose of enlarging, regulating, and using such library; and for that purpose, any justice of the peace may, on the application of five or more of the proprietors, issue an order to one of them, directing him to call a meeting of the proprietors, at the time and place expressed in the order, for the purpose of forming such corporation, and such meeting shall be called by posting up a notice containing the substance of such order, in at least two public places in the town where such library is kept, at least seven days before the time of meeting.

Choice of officers; certificate made and filed.

SEC. 2. Any seven or more of the proprietors of such library, met in pursuance of such notice, may choose a president, a clerk, a librarian, collector, treasurer, and such other officers as they may deem necessary, and they may also determine the mode of calling future meetings of the proprietors; and the proceedings of such first meeting, containing a specification of the corporate name adopted by such proprietors, shall be certified by the clerk of such corporation, and recorded by the register of deeds of the county within which the same is formed, who shall be entitled to receive seventy-five cents for recording the same.

Powers of proprietors.

SEC. 3. When such proprietors shall be organized as a corporation in the manner herein before provided, they shall have all the powers and privileges, and be subject to all the duties of a corporation, agreeably to the provisions of law regulating corporations, so far as such provisions shall be applicable in such case, and not inconsistent with the provisions of this chapter.

Treasurer and collector to give bond.

SEC. 4. The treasurer and collector shall give bond to such corporation, with sufficient sureties, to the satisfaction of the president, for the faithful discharge of their duties.

Proprietors may raise money; shares transferable, &c.

SEC. 5. The said proprietors may raise such sums of money, by assessment on the shares, as they shall judge necessary for the purpose of preserving, enlarging and using the library; and the shares may be transferred according to such regulations as they may prescribe, and such corporation may hold real and personal estate to any amount not exceeding five thousand dollars, in addition to the value of their books.

Lyceums.

How lyceums formed and their powers.

SEC. 6. Any fifteen or more persons, in any town or county within this state, who shall, by writing, associate for the purpose of mental improvement, and the promotion of education, may form themselves into a corporation, by the name of "The Lyceum of ," (the name of the place where the meetings of the corporation are to be holden,) by calling their first meeting and being organized in like manner as is provided in this chapter, in the case of library corporations; and every lyceum, upon becoming a corporation as aforesaid, shall have, during the pleasure of the legislature, all the like rights, powers, and privileges, as the proprietors of such libraries, and may hold real and personal estate, not exceeding six thousand dollars.

CHAPTER 50.

OF THE INCORPORATION OF PLANK AND TURNPIKE ROAD COMPANIES.

How companies to be formed.

SECTION 1. Any number of persons, not less than five, may be formed into a corporation for the purpose of constructing and owning a plank road, or a turnpike road, by complying with the following requirements: notice shall be given in at least one newspaper printed in each county through which said road is intended to be constructed, of the time and place, or places, where books for subscribing to the stock of such road will be opened; if there be no newspaper printed in the county, then such notice shall be printed in a newspaper at the seat of government; and when stock to the amount of at least five hundred dollars for every mile of the road so intended to be built shall be, in good faith, subscribed, and five per cent paid thereon as hereinafter required, then the said subscribers may, upon due and proper notice, elect directors for the said corporation; and thereupon they shall severally subscribe articles of association, in which shall be set forth the name of the company, the number of years that the same is to continue, which shall not exceed fifty years from the date of said articles, whether it is a plank road or a turnpike which the company is formed to construct, the amount of the capital stock of the company, the number of shares of which the said stock shall consist, the number of the directors and their names, who shall manage the concerns of the company for the first year, and shall hold their offices until others are elected; the place from and to which the proposed road is to be constructed, and each town, city and village, into or through which it is intended to pass, and its length, as near as practicable.

Subscriptions; to be a body corporate and their powers.

SEC. 2. Each subscriber to such articles of asssociation shall subscribe thereto his name and place of residence, and the number of shares of stock taken by him in such company; the said articles of association may, after the provisions of the succeeding section have been complied with, be filed in the office of the secretary of state, and thereupon the persons who have so subscribed, and all persons who shall from time to time become stockholders in such company, shall be a body corporate, by the name specified in such articles, and shall possess the powers and privileges, and be subject to the provisions contained in the chapter entitled, "General provisions relating to corporations."

Five per cent to be paid in, &c.

SEC. 3. Such articles of association shall not be filed in the office of the secretary of state, until five per cent on the amount of the stock subscribed thereto shall have been actually and in good faith paid in cash to the directors named in such articles, nor until there is indorsed thereon or annexed thereto an affidavit, made by at least three of the directors named in such articles, that the amount of the capital stock required by the first section of this chapter, has been subscribed, and that five per cent on the amount has actually been paid in; and no stockholder shall be entitled to vote for directors of any company of which he may be a member, or for any other purpose unless all assessments due on his stock shall be paid before such election.

No stockholder to vote till all assessments paid.

Copy of articles of association to be evidence.

SEC. 4. A copy of any articles of association filed in pursuance of this chapter, with a copy of the affidavit aforesaid indorsed thereon, or annexed thereto, and certified by the secretary of state, shall in all courts and places be presumptive evidence of the incorporation of such company, and of the facts therein stated.

Business to be managed by board of directors; how same elected.

SEC. 5. The business and property of such company shall be managed and conducted by a board of seven directors, who after the first year shall be elected annually, at such time and place as shall be directed by the by-laws of such corporation, and public notice shall be given of the time and place of holding such election, not less than twenty days previous thereto, in such manner as shall be prescribed by the by-laws of the company; the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy; all elections shall be by ballot, and each stockholder shall be entitled to as many votes as he shall own shares of stock, and the persons having the greatest number of votes shall be directors; whenever any vacancy shall happen in the board of directors, such vacancy shall be filled for the remainder of their term by the remaining directors; the directors shall hold their office for one year, and until others are elected in their places, and no person shall be a director unless he is a stockholder in the company.

Vacancies, how filled, &c.

Corporation not dissolved if directors not elected on the day fixed, &c.

SEC. 6. In case it shall happen that an election for directors shall not be held on the day fixed for such election by the by-laws of such company, such corporation for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for directors, as shall be provided in the said by-laws, or if there be no such provision, then on some early day to be appointed by the directors then in office; and in all such cases the same notice of the time and place of holding the election, shall be given, as is provided in the preceding section, and all acts of the directors shall be binding as against such corporation, until their successors shall be elected.

Quorum.

Sec. 7. Five directors shall be a board for the transaction of business, and the acts of a majority of the board shall bind the corporation.

Choice of president.

Sec. 8. The directors, at their first meeting after their election, shall choose by ballot one of their number as president, and they shall supply a vacancy in the office of president whenever the same shall occur.

Powers of directors and president

Sec. 9. The president and directors shall have power to make and prescribe such by-laws, rules and regulations respecting the transfer of the stock, and the management and control of the property, business and affairs of such corporation, as they may deem proper, not inconsistent with the constitution and laws of the United States, or of this state; and shall have power to appoint and employ officers, clerks, agents and servants, for conducting and carrying on the business of such corporation, and determine their duties, and the salaries and wages to be paid them.

May enter upon and take lands, &c.

Sec. 10. It shall be lawful for such company, their officers, engineers and agents, to enter upon any lands for the purpose of exploring, surveying, and locating the route of such road, doing thereto no unnecessary damage, nor locating any such road through any orchard or garden, without the consent of the owner thereof, nor through any buildings, or any fixtures or erections for the purposes of trade or manufactures, or any yard or inclosures necessary to the use and enjoyment thereof, without permission from the owners; and when the said route shall be determined by the said company, it shall be lawful for them, their officers, agents, engineers, contractors and servants, to enter upon, take possession of, and use such lands, to the width of four rods, upon their first making payment, at the time and in the manner hereinafter specified, of such compensation as the company may have agreed to pay therefor, or as shall be ascertained in the manner hereinafter directed: Provided, that the said corporation shall not, in their corporate capacity, hold, purchase, or deal, in any lands within this state, other than the land on which said road shall run, or which may be actually necessary for the construction or maintenance thereof, and of the gates, toll houses, and other fixtures connected therewith.

May take lands by purchase or gift, &c.

Sec. 11. Such company, so formed, may procure, by purchase or gift from the owners thereof, any lands necessary for the construction of such road, or for the erection of gates, toll houses, and other fixtures, and may also procure, by agreement with the supervisors of any town, the right to take and use any part of any public highway in such town, for the construction of such proposed road, and agree with such supervisors upon the amount of compensation and damages to be paid by such company to such supervisors therefor; every such agreement with the supervisors shall be in writing, and shall be filed in the town clerk's office of the town; and such compensation and damages, when paid to the supervisors, shall be expended by them in improving the highways of such town.

CHAPTER 50

Survey of roads to be made and recorded

SEC. 12. When any such company shall have procured all the lands necessary to be used for the construction of its road in any town, and the right to take and use such parts of the public highways in such town as shall be necessary for that purpose, it shall cause an accurate survey of such road to be signed by its president and secretary, and acknowledged by them, as conveyances of real estate are required to be acknowledged and recorded in the office of the register of deeds of such county; and whenever such company shall have so procured the lands, and the right to take and use the parts of public highways necessary to construct its road in any such town, and shall have caused such survey thereof to be made and recorded, said company may construct so much of its road as shall be intended to be constructed in any such town; and so much of any such road as shall be situate in any county, may be embraced in one survey and recorded as aforesaid.

When may construct road.

When parties may appoint appraisers; appraisement how made.

SEC. 13. Whenever it shall be necessary for such company to enter upon and occupy, for the purpose of making said road, any lands, the owner of which shall refuse to permit such entry or occupation, and such company cannot agree with such owner upon the compensation and damages to be paid for the use of such lands, it shall be lawful for the parties to appoint three disinterested persons, residents of the county, to estimate and appraise such compensation and damages; every such appraisement shall be reduced to writing, and signed by the appraisers, or a majority of them, and a duplicate copy thereof shall be furnished to each of the parties; the expense of such appraisment shall be paid by said company.

When judge to appoint commissioners.

SEC. 14. In case such company and the owner of such lands cannot agree upon the persons to make such appraisement, or if the persons agreed upon shall not decide upon the matter, or if the owner of such land shall refuse or neglect within twenty days after being notified thereof to join in such appointment; or if such owner shall be a married woman, under age, an idiot, non-resident of the state, or unknown, then the said company shall make application to the judge of the circuit court of the circuit in which such lands are situated, specifying the route of the proposed road, and asking for the appointment of three commissioners to appraise the damages which any person or corporation may sustain by reason of the construction of such road, and such application shall be signed by a majority of the directors of such company.

How to appoint same.

SEC. 15. Upon such application being presented to such judge, he shall fix a time and place when and where he will appoint such commissioners, and shall order a notice thereof to be given to the persons interested in such lands in such manner as he shall deem proper; and upon satisfactory proof by affidavit that such notice has been duly given, he shall appoint three disinterested persons, who are residents of the county where such lands are situated, and not owners of real estate in any town through which said road is proposed to be constructed, to act as commissioners for the appraisal of all such damages in their county.

Proceedings of commissioners in assessing damages.

SEC. 16. Such commissioners shall, before proceeding to make such appraisal, be furnished with a map and a description of the lands to be appraised, together with the names and residence of the persons or corporations owning or having any interest therein, so far as the same can be ascertained, and such commissioners shall, by an order under their hands, appoint a time and place for the ascertaining and determining the amount of damages to which any owner of the land may be justly entitled, notice whereof shall be served, not less than twelve days previously on the party interested in the lands or damages to be appraised, in such manner as the commissioners shall in and by their order direct; and on the day so appointed, the said commissioners shall meet in pursuance of said order, and having organized by taking and subscribing an oath or affirmation, to be administered by any officer authorized to administer oaths, justly and impartially to appraise the lands required for the use of said company, for such road in their county, and to award the compensation and damages which ought justly to be paid for the same to the owners thereof, and faithfully to perform their duty as such commissioners according to law, and the best of their judgment and ability, they shall proceed to hear the parties and view the lands to be appraised in each case; and after hearing the proofs and allegations of the parties, they or a majority of them agreeing, shall make up and sign their award of the damages, embracing therein a description of the land in respect to which it is found, and such award may include assessment of damages to one or more persons, and shall be acknowledged by the commissioners before some officer authorized to take the acknowledgment of deeds, and filed in the office of the register of deeds of the county in which the damages were assessed, or the land appraised shall be situated: Provided, that the said commissioners shall in no case make an award of damages or other determination, until said company shall have produced satisfactory proof by affidavit that the notice of the meeting of the commissioners has been given, as prescribed in this section, and such affidavit shall be attached to, and filed with the award or determination of such commissioners.

When commissioners to appoint person to act for others in certain cases.

SEC. 17. If any person interested in lands or damages, to be appraised by such commissioners, shall be a married woman, under age, an idiot, insane person, not a resident of this state, or shall be unknown, and there shall be no one duly authorized by law to act instead of any such person, the said commissioners, on being applied to for that purpose by the said company, shall be authorized and required to appoint, by an order in writing, to be made and signed by them, some competent and suitable person who will consent to act, to take care of the interests of such interested person, in respect to the proceedings to ascertain such damages; and all such notices as are required to be served on any owner or interested person residing in such county, shall be served upon the person so appointed in like manner and with like effect, as if served on the owner or person interested, but any person so appointed to take care of the interests of any such non-resident or unknown person, may be superseded by him.

Person appointed how to be regarded.

SEC. 18. In all cases of the appraisal of land authorized by this chapter, or of damages, and every proceeding in relation thereto, in which the appointment of a person shall have been made, in accordance with the provisions of the preceding section, the person so appointed shall be regarded and treated in all respects as a party representing the interests of the person or persons owning or interested in the land or damages appraised; and all proceedings in such cases shall be effectual and conclusive upon the party represented by the person so appointed.

Powers and duties of commissioners

SEC. 19. Whenever such commissioners shall have met together to make an appraisal of damages, agreeably to the provisions of this chapter, and shall have taken the oath in such case required, they shall have authority to adjourn their meeting from time to time, as they may deem proper and to issue subpœnas requiring the attendance of necessary witnesses; and each of the said commissioners is authorized to administer the proper oath or affirmation to such witnesses as may be examined before them, and to take any affidavit relating to the proceedings in any appraisal of damages which they may be called upon to make; and it shall be the duty of such commissioners to keep minutes of their proceedings in making any appraisal, and to deposite the same, together with their award of damages, and all papers used before them relating thereto, in the office of the register of deeds of the county where the land appraised shall be situated, or the damages shall be awarded; the said commissioners shall be entitled to two dollars a day for their services while attending to the duties required of them in this chapter, which shall be paid by the said company.

Their fees

Subpœnas may be issued.

SEC. 20. On application of any party interested, any judge or justice of the peace may issue a subpœna, requiring witnesses to attend before such commissioners, and such subpœna shall have the same force and effect and the witnesses duly subpœnaed by virtue thereof, and refusing or neglecting to obey the same, shall be subject to the same penalties and liabilities, as if such subpœna were issued from a court of record in a suit pending therein.

Appeal allowed.

SEC. 21. Either party feeling aggrieved by any such appraisal of land or damages, is authorized to appeal therefrom, within thirty days from the time of being notified of such appraisal, to the circuit court of the county in which the said appraisal is made, by a notice in writing to that effect to be served upon the opposite party.

When company shall pay the damages appraised, and may take lands.

SEC. 22. Within forty days after the making of any award by the commissioners appointed to appraise damages, if an appeal from such award shall not have been taken, the company shall pay to the person entitled to receive the same the amount thereof or shall make a legal tender thereof to him, if he shall refuse to receive the same, and the company may thereupon enter upon the lands in respect to which such award was made, and take and hold the same, to it and its assigns, so long as it shall be used for the purposes of such a road as such company was formed to construct.

When award may be paid to county treasurer &c.

SEC. 23. If any person entitled to receive the amount of any such award, be not a resident of this state, or cannot be found therein, the company may furnish to the judge of the circuit court, for the county in which such award shall be made, satisfactory proof of such fact, and he shall thereupon make an order, that the amount of such award shall be paid to the treasurer of the county in which the lands lie, in respect to which such award was made, for the use of such owner, and that notice of such payment shall be given, by publishing the same once in each week, for six successive weeks, in a newspaper published in the county, if there be one published there, if not, then such publication shall be made in some newspaper published at the seat of government; on satisfactory proof being made to the said judge, within three months from the time of making the last mentioned order, of such payment and publication, he shall make an order authorizing the company to take and hold the land in respect to which such award was made, which shall have the same effect as if such payment had been made to the owner personally; the affidavits and orders mentioned in this section, and all other affidavits and orders made and precepts issued, in the course of the proceedings under this chapter in relation to the acquisition of the land to be used for such road, shall be filed in the office of the register of deeds of the county; and all such orders and the awards of the commissioners shall be recorded by such register in the records of deeds, at the expense of such company.

All affidavits and orders to be filed and recorded by register of deeds.

SEC. 24. If any owner shall appeal to the circuit court from the decision of the commissioners, the company, upon depositing the amount of the award sought to be set aside, in such manner as the judge of the said circuit court shall, upon hearing the parties, direct, in trust that the same, or so much thereof as the said owner shall be entitled to receive, shall be paid to him on demand, and on giving such security by bond, as the said judge shall approve, for the payment to such owner of any sum which he may be entitled to receive from the company in respect to the land in question, by reason of any verdict, or the judgment of any court, for such compensation, damages and costs, the company may enter upon and use such lands for the purposes of such road; but the title of the owner thereof shall not be divested, until the payment or legal tender to him, of the whole amount which he shall be entitled to receive from the company for such compensation, damages and costs; and on such payment or tender being made, the said company shall be entitled to take and hold such lands, to it and its assigns, so long as the same shall be used for the purposes of such a road as such company was formed to construct.

When and how, in case of appeal, company may take lands.

SEC. 25. Every plank road made by virtue of this chapter, shall be laid out at least four rods wide, and shall be so constructed as to make, secure, and maintain a smooth and permanent road, the track of which shall be made of timber, plank or other hard material, so that the same shall form a hard and even surface, and be so constructed, as to permit carriages and other vehicles, conveniently and easily to pass each other, and also so as to permit all carriages to pass on and off where such road is intersected by other roads.

How plank roads to be constructed.

SEC. 26. Every turnpike road, that shall be constructed by virtue of this chapter, shall be laid out, at least four rods wide, and shall be bedded with stone, gravel, or such other materials as may be found on the line thereof, and faced with broken stone or gravel, so as to form a hard and even surface, with good and sufficient ditches on each side, wherever the same are practicable; the arch or bed of such road, shall be at least eighteen feet wide, and shall be so constructed, as to permit carriages and other vehicles

Turnpike roads, how to be constructed.

conveniently to pass each other, and to pass on and off such turnpike where it may be intersected by other roads.

When toll gates may be erected on plank roads.

SEC. 27. Whenever any plank road company shall have completed their road, or any five consecutive miles thereof, the said company may erect one or more toll-gates upon their road, but not within three miles of each other, and may demand and receive tolls not exceeding two cents per mile, for any vehicle drawn by two animals, and for any vehicle drawn by more than two animals, one half cent per mile for every additional animal; for every vehicle drawn by one animal, one cent per mile; for every score of sheep or swine, and for every score of neat cattle, one cent per mile; and in the same proportion for any greater or less number of cattle, sheep or swine; for every horse and rider, or led horse, three-fourths of a cent per mile.

Rates of toll

Same of turnpike roads.

SEC. 28. Whenever any turnpike road company shall have completed their road or any five consecutive miles thereof, the said company may erect one or more toll-gates upon their road, but not within three miles of each other, and may demand and receive tolls not exceeding the following rates: for every vehicle drawn by one animal, three-quarters of a cent a mile, for every vehicle drawn by two animals, one and one half cents a mile, and for every vehicle drawn by more than two animals, one quarter cent additional a mile for every animal more than two; for every score of neat cattle, one cent a mile; for every score of sheep or swine, one half cent a mile; and in the same proportion for any greater or less number of neat cattle, sheep or swine; for every horse and rider, or led horse, one half cent a mile.

Who exempt from toll.

SEC. 29. No tolls shall be collected at any gate of any company incorporated under this chapter, from any person passing to or from public worship, or a funeral, or from any person going for a physician, or returning from such errand; or from any person going to or returning from any court, when legally summoned as a juror or witness; or from any person going to a town meeting or election at which he is entitled to vote, for the purpose of giving such vote and returning therefrom; or from farmers going to and from their work on their farms; and no more than half the rates of toll provided for in this chapter, shall be taken from persons living within one mile of the gate at which such toll is taken.

When and how location of gate may be changed.

SEC. 30. The supervisors of any town in which a toll gate may be located on any such roads, whenever they, or a majority of them, shall be of opinion that the location of such gate is unjust to the public interest, by reason of the proximity of diverging roads, or for other reasons, may on at least fifteen days written notice to the president or secretary of said company, apply to the county judge of the county in which such gate is located, for an order to alter or change the location of such gate; the said judge on such application being made, and on hearing the respective parties, and on viewing the premises, if he shall deem such view necessary, shall make such order in the matter as to him may seem just and proper; and either party may, within fifteen days thereafter, appeal from such order to the circuit court of the county, on giving such security as the county jndge shall require; such order, unless appealed from, shall be observed by the respective parties, and may

Appeal allowed.

be enforced by attachment or otherwise as the said court shall direct; and if appealed from, the decision of the circuit court shall be final in the matter; and the said county and circuit courts may direct the payment of costs in the premises, as shall be deemed just and equitable.

When and how installments required to be paid

SEC. 31. The directors of any company incorporated under this chapter, may require payment of the sums subscribed to the capital stock, at such times, and in such proportions, and on such conditions, as they shall see fit, under the penalty of the forfeiture of the stock, and all previous payments thereon; and they shall give notice of the payments thus required, and of the place and time where and when the same are to be made, at least thirty days previous to the payment of the same, in one newspaper printed in each county in or through which the said road is located, or by sending such notice to each stockholder by mail, directed to him at his usual place of residence.

Shares to be personal property; capital stock may be increased.

SEC. 32. The shares of any company formed under this chapter, shall be deemed personal property, and may be transferred as shall be prescribed by the by-laws of such company; the directors of any such company may at any time, with the consent of a majority in amount of the stockholders in such company, provide for such increase of the capital stock of such company, as may be necessary to finish the making of a road actually commenced and partly constructed.

Notice to be given where office of company is to be kept

SEC. 33. Within thirty days after the formation of any company by virtue of this chapter, the directors thereof shall designate some place within a county, in which, according to the articles of association of such company, its road, or some part thereof, is to be constructed, as the office of such company, and shall give public notice thereof, by publishing the same in a newspaper published in such county, if any there be, if not then in a paper published at the seat of government, which publication shall be continued once in each week for three successive weeks, and shall file a copy of such notice in the office of the clerk of the circuit court of every county in which any part of such road is constructed or is to be constructed; and if the place of such office shall be changed, like notice of such change shall be published and filed as aforesaid, before it shall take place, in which notice, the time of making the change shall be specified; and every notice, summons, declaration, or other paper required by law to be served on such company, may be served, by leaving the same at such office, with any person having charge thereof, at any time between nine o'clock in the forenoon and noon, and between two and five o'clock in the afternoon, of any day except Sunday.

Where papers may be served on company.

Book to be kept by secretary, what to contain, and to be kept open.

SEC. 34. It shall be the duty of the directors of any such company, to cause a book to be kept by the secretary, treasurer or clerk thereof, containing the names of all persons alphabetically arranged, who are, or shall within six years, have been stockholders of such company, and showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the holders of such shares, and every transfer of stock and the amount of stock actually paid in; which book shall, from nine o'clock in the forenoon until noon,

CHAPTER 50

and from two o'clock in the afternoon until five, on every day except Sunday, be open for the inspection of all persons who may desire to examine the same, at the office of such company; and any and every person shall have the right to make extracts from such book; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this chapter, until it shall have been entered therein as required by this section, by an entry showing to and from whom transferred. Such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff in any suit or proceeding against such company, or against any one or more stockholders, or against such company and one or more stockholders jointly. Every officer or agent of such company, who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured, a penalty of fifty dollars for every such neglect or refusal, and all the damages resulting therefrom; and every company that shall neglect to keep such a book open for inspection as aforesaid, shall forfeit and pay the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the name of the state, by the district attorney of any county in or through which the road of such company shall be constructed.

Book to be evidence

Penalty for neglect.

Individual liability of stockholders.

SEC. 35. The stockholders of every company incorporated under this chapter, shall be liable in their individual capacity for the payment of the debts of such company, for an amount equal to the amount of the stock they have severally subscribed or held in said company, over and above such stock, to be recovered of the stockholder who is such when the debt is contracted, or of any subsequent stockholder; and any stockholder who may have paid any demand against such company, either voluntarily, or by compulsion, shall have a right to resort to the rest of the stockholders who were liable to contribution; and the dissolution of any company shall not release or affect the liability of any stockholder, which may have been incurred before such dissolution.

Contribution may be compelled.

Debts of company not to exceed fifty per cent of its capital paid in, &c.

SEC. 36. The debts and liabilities of any company formed under this chapter, shall not exceed in amount, at any one time, fifty per cent of the amount of its capital actually paid in, and if such debts and liabilities shall at any time exceed such amount, the stockholders who were such at the time any excess of debts or liabilities shall be created or incurred, shall be jointly and severally, individually liable for such excess, in addition to their other individual liability, as provided in this chapter.

Stockholders may be made joint defendants with company.

SEC. 37. In any action against any company formed under the provisions of this chapter, the plaintiff may include as defendants, any one or more of the stockholders of such company, who shall, by virtue of the provisions of this chapter be claimed to be liable to contribute to the payment of the plaintiff's claim; and if judgment be given against such company in favor of the plaintiff, for his claim, or any part thereof, and any one or more of the stockholders so made defendants, shall be found to be liable as aforesaid, judgment shall also be given against him or them, and shall show the extent of his or their liabilities individually; and the execution upon such judgment shall direct the collection of the sum for which it may be issued, of the property of such company liable to be levied upon by virtue thereof, and in case such property sufficient to satisfy the same cannot be found in the county of the officer to whom the same shall be directed, that the deficiency, or so much thereof as the stockholders who shall be defendants in such judgment shall be liable to pay, shall be collected of the property of such stockholders respectively; and if in any such action, any one or more of such stockholders shall be found not to be liable for the demand of the plaintiff, or any part thereof, judgment shall be given for the stockholders so found not to be liable, but no verdict or judgment in favor of any such stockholder, shall prevent the plaintiff in such action from proceeding therein against the company alone, or against it and such defendants who are stockholders, as shall be liable for such demand, or some portion thereof. Suits may be brought against one or more stockholders who are claimed to be liable for any debt owing by the company, or any part of such debt, without joining the company in such suit; but no such suit shall be so brought, until judgment on the demand shall have been obtained against the company, and execution thereon returned unsatisfied, in whole or in part, or until the company shall have been dissolved; but it shall not be necessary that such dissolution shall have been declared by any judicial decree, sentence or determination; and in such suit there may be a verdict and judgment in favor of any defendant not liable as aforesaid; but such verdict and judgment shall not prevent the plaintiff in such suit from proceeding therein against any defendant who shall be liable as aforesaid.

How execution to be issued.

Judgment for stockholders not liable.

When suit may be brought against one or more stockholders without joining company.

SEC. 38. The directors of every company formed under the provisions of this chapter, shall report annually to the secretary of state, under the oath of two of such directors, the cost of constructing their road; the amount of all moneys expended; the amount of their capital; how much of the same is paid in; and how much is actually expended; the whole amount of tolls or earnings expended on such road; the amount received during the previous year for tolls, and from all other sources, stating each separately; the amount expended; the amount of dividends made; the amount set apart for repairs, and the amount of indebtedness of such company, specifying the object for which the indebtedness accrued.

Directors to report annually, and what report to contain

SEC. 39. The justices of the peace in each town in which there shall be any plank or turnpike road, shall be inspectors of such roads within their town; and whenever a complaint in writing shall be made, to any two justices of the peace of the same town, that any part of any such road in their town is out of repair, they shall without delay, view and examine the road complained of, and if they find such complaint to be just, they shall give notice in writing of the defect, to the toll gatherer or person attending the gate nearest the place out of repair, and may, in their discretion, order such gate to be thrown open; but such justices shall not order such

Justices of the peace to be inspectors; when may order gate thrown open.

gate to be thrown open, unless a notice in writing shall have been served on the gate keeper nearest the place out of repair, particularly describing such place, at least three days previous to making such order.

When gate shall be thrown open.

SEC. 40. Notice of such order shall be served on such gate keeper, and immediately thereafter the gate ordered to be thrown open shall be opened, nor shall it be again shut, nor shall any toll be collected thereat, until two justices of the peace of the town where such road shall have been out of repair shall grant a certificate, that such road is in sufficient repair, and that such gate ought to be closed.

When may be closed.

When place out of repair is nearest to a gate in an adjoining county.

SEC. 41. Whenever any part of any such road shall be out of repair, and the gate nearest to the place out of repair is situated in an adjoining county, any two justices of the town in such adjoining county, where such gate may be, upon complaint made to them in writing, shall view and examine the road complained of, and proceed thereon as provided in the thirty-ninth section of this chapter, in like manner as if the portion of road complained of was within the town where such gate is situated.

When and how company may appeal.

SEC. 42. Whenever any toll gate shall be ordered to be thrown open, as provided in the preceding sections, or whenever such justices shall refuse to grant a certificate that the road complained of is in sufficient repair, the company owning such gate, or the gatekeeper attending the same in their behalf, may appeal from the order or decision of such justices to the county judge of the same county where such justices reside, by delivering a statement in writing of their order or decision, and of such appeal verified by affidavit, to such judge; and thereupon such county judge shall forthwith proceed to view and examine the road complained of, and may reverse or confirm the order or decision of such justices respecting the same; and if he shall reverse their order or decision, then such gate may be closed, but if he shall confirm the same, then such gate shall not be closed until such county judge shall grant a certificate that such road is in sufficient repair.

Powers and duties of county judge thereon.

Penalty on gatekeeper for certain offences.

SEC. 43. Every keeper of a gate ordered to be thrown open, who shall not immediately obey such order, or who shall not keep open such gate until a certificate permitting it to be closed shall be granted, or who, during the time such gate ought to be open, shall hinder or delay any person in passing, or take or demand any tolls from any person passing, shall for each offence forfeit the sum of ten dollars to the party aggrieved.

Fees of judge and justice, and by whom paid.

SEC. 44. To each justice of the peace who shall view a plank or turnpike road, upon complaint made to him, and to each county judge for like services, shall be allowed the sum of one dollar and fifty cents for each day spent by him in the performance of such duty; and if the road viewed shall be adjudged to be out of repair, such fees shall be paid by the company to which the road shall belong, otherwise they shall be paid by the party making the complaint.

How collected, when payable by company.

SEC. 45. Such fees when payable by the company, shall be paid by the toll gatherer nearest that part of the road adjudged out of repair, on demand, and out of the tolls received or to be received by him; and may be recovered, with costs, of such toll gatherer, if he shall neglect or refuse to make such payment.

Penalty on toll gatherer for delaying traveler or demanding too much toll.

Sec. 46. Every toll gatherer, who at any such gate shall unreasonably hinder or delay any traveler or passenger, or shall demand and receive from any person more toll than by law he is authorized to collect, shall for each offence, forfeit the sum of five dollars to the person aggrieved.

When judgment against toll gatherer may be recovered of corporation.

Sec. 47. Whenever a judgment is obtained against a toll gatherer for a penalty, or for damages for acts done, or omitted to be done by him, in his capacity of toll gatherer, and goods and chattels of the defendant to satisfy such judgment cannot be found, it shall be paid by the corporation whose officer he shall be; and if on demand, payment be refused by the corporation, the amount of such judgment may be recovered, with costs, of such corporation.

List of rates of tolls to be posted at gates.

Sec. 48. It shall be the duty of the directors of every such company, to affix and keep up, at or over each gate, in some conspicuous place; so as to be conveniently read, a printed list of the rates of toll demandable at such gate.

When gate keeper may detain.

Sec. 49. Each toll gatherer may detain, and prevent from passing through his gate, all persons riding, leading, or driving animals or carriages subject to toll, until they shall have paid respectively the tolls authorized by law.

Corporation liable for damages for not keeping road in repair.

Sec. 50. Any such corporation shall be liable for all damages, that may be sustained by any person or persons, in consequence of neglect or omission to keep such road in good condition and repair.

Penalty for injury to road, &c.

Sec. 51. If any person shall wilfully obstruct, break, injure or destroy any road constructed under the provisions of this chapter, or any work, building, fixtures, or toll gate attached to, or in use upon the same, belonging to said company, such person so offending, shall for every such offence, be deemed guilty of a misdemeanor, and shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

Penalty for passing or avoiding gate without payment of toll.

Sec. 52. Any person who shall forcibly, or fraudulently pass any toll gate erected on such road, in pursuance of this chapter, without having paid the legal toll, and any person, who to avoid the payment of legal toll shall with his carriage or horse, or other vehicle or animal liable to toll, turn out of such road, or pass any gate thereon on ground adjacent thereto, and enter again on such road, shall for each offence be liable to a fine not exceeding ten dollars.

When company shall cease to exist.

Sec. 53. Every company incorporated under this chapter shall cease to be a body corporate:

1. If within two years from the filing of their articles of association, they shall not have commenced the construction of their road, and actually expended thereon at least ten per cent of the capital stock of such company; and

2. If within five years from such filing of the articles of association, such road shall not be completed according to the provisions of this chapter.

Companies liable to visitation, &c.

Sec. 54. All companies formed under this chapter, shall at all times be subject to visitation and examination, by the legislature, or by a committee appointed by either house thereof, or by any agent or officer in pursuance of law; and the courts of this state shall have the same jurisdiction over such corporations and their officers, as over those created by special acts.

Power of legislature over companies.

SEC. 55. The legislature may at any time, establish rules and regulations for the government of any such corporation in relation to such road, the use of the same, and the rates of tolls to be collected thereon, and may alter, amend or repeal this chapter, or may annul and disfranchise any corporation formed or created under the same.

Not to exercise banking powers.

SEC. 56. No company or corporation shall, under any pretence whatever, exercise any banking powers, under a penalty of forfeiture of their rights under the provisions of this chapter.

CHAPTER 51.

OF CORPORATIONS FOR MANUFACTURING, MINING, LUMBERING, AGRICULTURAL, MECHANICAL AND CHEMICAL PURPOSES.

How corporation may be formed

SECTION 1. Any three or more persons desirous of forming a corporation for the purpose of carrying on any kind of manufacturing, mining, lumbering, agricultural, mechanical, or chemical business, may make, sign and acknowledge before some officer authorized to take the acknowledgment of deeds, a certificate in writing, in which shall be stated the name of such corporation, and the objects for which the corporation shall be formed, the amount of the capital stock of such corporation, the term of its existence, which shall not exceed thirty years, the number of shares of which said stock shall consist, the number of trustees, and their names, who shall manage the concerns of said corporation for the first year, and the names of the town and county in which the operations of the said corporation are to be carried on.

Certificate to be filed.

SEC. 2. Such certificate shall be filed in the office of the register of deeds of the county in which the business of the corporation shall be carried on, and a duplicate thereof shall be filed in the office of the secretary of state.

To be a body corporate, and their powers as such.

SEC. 3. When such certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, by the name stated in such certificate; and by that name may have succession, and shall be capable of suing and being sued, and they may have a common seal, and may alter the same at pleasure, and they shall by their corporate name be capable of purchasing, holding and conveying any real and personal estate whatever, which may be necessary to enable the said corporation to carry on the business named in such certificate, but shall not mortgage the same or give any lien thereon: Provided, that the amount of real estate so owned and held, shall not at any time exceed forty acres to each stockholder in such corporation.

Limitation of amount of land to be held by each stockholder.

Trustees, their election, powers, &c

SEC. 4. The stock, property and concerns of such corporation, shall be managed by not less than three, nor more than nine trustees, who shall respectively be stockholders in such corporation, and who shall, except the first year, be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the corporation.

Notice of elections, &c.

SEC. 5. Public notice of the time and place of holding such election shall be given, not less than ten days previous thereto, by publication in the newspaper printed nearest the place where the business of the corporation shall be carried on, or in such other manner as shall be prescribed by the by-laws of the corporation; and the election shall be made by such of the stockholders as shall attend for that purpose either in person or by proxy.

Elections to be by ballot; who entitled to vote, &c.; vacancies how filled.

SEC. 6. All elections shall be by ballot, and each stockholder shall be entitled to one vote in the said corporation, and the persons receiving the majority of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation or otherwise, it shall be filled for the remainder of the year, in such manner as may be provided for by the by-laws of the said corporation.

Corporation not dissolved by failure to elect trustees; election may be held on any other day.

SEC. 7. In case it shall happen at any time, that an election of trustees shall not be made on the day fixed for such election by the by-laws of said corporation, the corporation for that reason shall not be dissolved; but it shall be lawful on any other day to hold an election for trustees, as shall be provided for by the said by-laws, and all acts of the trustees shall be valid and binding as against such corporation, until their successors shall be elected.

Power of trustees to make by-laws, appoint officers, &c.

SEC. 8. The trustees shall have power to make and prescribe such by-laws, rules and regulations, respecting the management, control and disposition of the stock, property and business of such corporation, as they may deem expedient and proper, not inconsistent with the constitution and laws of the United States, or of this state, and shall have power to appoint and employ officers, clerks and servants for conducting and carrying on the business of such corporation, and determine their duties and the salaries and wages to be paid them.

Trustees may make calls of stock; proceedings in case of failure to pay same

SEC. 9. It shall be lawful for the trustees to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such times, and in such payments or instalments as the trustees shall deem proper; and if any stockholder shall fail to pay the amounts so required to be paid, and at the times required for such payments, the stock of such delinquent stockholder, or such portions thereof as may be required to meet such payments, may be sold by the trustees at public auction, after giving public notice of the time and place of such sale, at least twenty days previous thereto, by publication of such notice in the newspaper printed nearest the place of business of such corporation, or by giving such notice in such other manner as shall be prescribed by the by-laws of such corporation; and the surplus, if any, arising from the sale of such stock, over and above the amount due thereon, shall be paid by the trustees to such delinquent stockholder; and a transfer of stock so sold, made by the trustees in the name of the holder of the stock, shall vest a good and valid title thereto in the purchaser; or the said corporation may commence and prosecute, in any court of competent jurisdiction, an action against any subscriber for stock in said corporation, and recover judgment for the amount due on his subscription, with interest thereon from the time the same was required to be paid, and have execution therefor.

Stock to be deemed personal estate; to be transferable, &c.

SEC. 10. The stock of said corporation shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the corporation, but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or they shall have been sold, as provided in the preceding section, for the non-payment of calls thereon; and it shall not be lawful for such corporation to use any of their funds in the purchase of any stock in any other corporation.

Stockholders personally liable for services rendered.

SEC. 11. The stockholders of any corporation organized under the provisions of this chapter, shall be jointly and individually liable for all debts that may be due and owing to all their clerks, laborers and servants, for services performed for such corporation.

When stockholders personally liable for all other debts of the corporation.

SEC. 12. All such stockholders shall be jointly and individually liable for the payment of all other debts of such corporation, to be recovered of the stockholder who is such when the debt is contracted; but he shall not be so liable except as mentioned in the preceding section, unless suit shall be commenced against such stockholder for such debt within five years from the time he shall have ceased to be a stockholder in such corporation, nor unless an execution issued against the corporation for the collection of such debt shall have been returned unsatisfied in whole or in part.

Executors, trustees, &c., holding stock not liable personally, &c.

SEC. 13. No person holding stock in such corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such corporation, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner as the testator or intestate would have been, if he had been living, or the ward or person interested in such trust fund would have been, if he had been competent to act, and held the same stock in his own name.

Who to represent stock held in trust, and who on pledge.

SEC. 14. Every such executor, administrator, guardian or trustee, shall represent the share of stock in his hands at all meetings of the corporation, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid, may nevertheless represent the same at all such meetings, and may vote accordingly as a stockholder.

Stock to be paid in money, and same not to be loaned to stockholders.

SEC. 15. Nothing but money shall be considered as payment of the capital stock of any corporation formed under the provisions of this chapter, and no loan of money shall be made, by any such corporation to any stockholder therein.

Legislature may amend or repeal law of incorporation, &c.

SEC. 16. The legislature may at any time alter, amend or repeal this chapter, or may amend, or repeal any corporation formed or created under this chapter; but such amendment or repeal shall not, nor shall the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

Corporations may increase or diminish their capital stock; existing corporations may organize under this chapter

SEC. 17. Any corporation formed under this chapter may increase or diminish its capital stock, and may also extend its business to any other manufacturing, mining, lumbering, agricultural, mechanical or chemical business, in the manner hereinafter provided, and any existing company heretofore formed may come under and avail itself of the privileges and provisions of this chapter, by complying with the following provisions; and thereupon such company, its officers and stockholders shall be subject to all the restrictions, duties and liabilities of this chapter.

How notice to be given in such cases.

SEC. 18. Whenever any company shall desire to avail itself of the privileges and provisions of this chapter, or shall desire to increase or diminish the amount of its capital. stock, or extend or change its business, a meeting of the stockholders shall be called by the trustees, whose duty it shall be to publish a notice of such meeting, signed by a majority of them, in a newspaper printed in the county, if any shall be published therein, and if none, then in a newspaper printed nearest their principal place of business, at least three successive weeks, and to serve personally on each stockholder, a written or printed copy thereof, or deposite such copy in the post office, addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting; such notice shall specify the object of such meeting, the time and place when and where the same shall be held, and the amount to which it is proposed to increase or diminish the capital stock, and the business to which the company would be extended or changed.

Proceedings in such cases, &c.

SEC. 19. At the time and place specified in the notice provided for in the preceding section, the stockholders present in person or by proxy, shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to vote, and if on canvassing the votes, it shall be found that votes representing at least two-thirds of all the shares of stock of such company have been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business, or in favor of availing itself of the provisions and privileges of this chapter as aforesaid, a certificate of the proceedings showing a compliance with the provisions of this chapter, the business to which the company is extended or changed, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman and secretary, and such certificate shall be acknowledged by the chairman and secretary, and filed as required by the first section of this chapter, and when so filed, the capital of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed as aforesaid, and the company shall be entitled to the provisions and privileges, and be subject to the liabilities of this chapter, as the case may be.

Trustees to cause book to be kept; same to be kept open, and all transfers of stock to be entered therein.

SEC. 20. It shall be the duty of the trustees of every such corporation or company, to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons alphabetically arranged, who are or shall have been within six years stockholders of such company, and showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares, every transfer of stock, and the amount of stock actually paid in; which books shall, during the usual business hours of the day, on every day except Sunday, be open for the inspection of stockholders and creditors of the company, and their personal representatives, at the office, or principal place of business of such company, in the county where its business operations shall be located, and any and every such stockholder, creditor, or representative, shall have a right to make extracts from such book; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this chapter until it shall have been entered therein as required by this section, by an entry, showing to and from whom transferred. Such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff, in any suit or proceeding against such company, or against one or more stockholders. Every officer or agent of any such company, who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, and extracts to be taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, and the company shall forfeit and pay for every such neglect or refusal to the party injured thereby, all the damages resulting therefrom; and every company that shall neglect to keep such book open for inspection as aforesaid, shall forfeit and pay the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the name of the state, by the district attorney of the county in which the business of such corporation shall be located.

Penalty on officers and company for neglect, &c.

Not to exercise banking powers

SEC. 21. Any company or corporation formed and organized under the provisions of this chapter, is hereby prohibited from exercising any banking powers under any pretence whatever, under a penalty of forfeiting their right of incorporation under or by virtue of this chapter.

CHAPTER 52.

OF THE INCORPORATION OF VILLAGES.

What territory may be incorporated into a village

SECTION 1. Any part of any town or towns, not included within any incorporated village, and containing a resident population of not less than three hundred persons, and if it shall include within its boundaries a territory of more than one square mile in extent, containing a resident population of at the rate of not less than three hundred persons to every square mile of territory included within such boundaries, may be incorporated as a village under the provisions of this chapter.

Survey and map to be made.

SEC. 2. The persons intending to make application for the incorporation of such village, as hereinafter provided, shall cause an accurate survey and map to be made of the territory intended to be embraced within the limits of such village; such survey, to be made by a practical surveyor, shall show the courses and distances of the boundaries thereof, and the quantity of land contained therein; the accuracy of which survey and map shall be verified by the affidavit of such surveyor, written thereon or annexed thereto.

Census to be taken

SEC. 3. Such persons shall also cause an accurate census to be taken, of the resident population of such territory, as it may be on some day not more than ten weeks previous to the time of presenting such application to the court, as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory, on such day, and the number of persons then belonging to every such family; and it shall be verified by the affidavit of the person taking the same, written thereon or annexed thereto.

Survey, map and census, where to be left, &c.

SEC. 4. Such survey, map and census, when completed and verified as aforesaid, shall be left at the residence, or place of business within such territory, of some person residing therein, and shall be subject to examination, at all reasonable hours, by every person interested in such application, for a period of five weeks from the posting, or first publication of the notice of such application, as hereinafter provided.

Notice of application to court.

SEC. 5. The persons intending to make such application, shall give notice that they will apply, on some day therein specified, to the circuit court for the county in which such territory shall lie, or if it shall lie in more than one county, to such court in one of such counties, to be named in such notice, for an order incorporating such territory as a village, by a name to be therein specified: such notice shall describe the boundaries of such territory by courses and distances, and by specifying the town or towns in which it shall lie; and it shall state where such survey, map and census have been left, and may be examined as aforesaid.

Notice how published.

SEC. 6. If there be a newspaper printed within such territory, such notice shall be printed therein once in each week, for six successive weeks previous to the time specified for making such application; and if there shall be no such paper, such notice shall be posted in at least ten of the most public places in such territory, at least six weeks before the time so specified.

Application to court, how made

SEC. 7. Such application shall be by petition, subscribed by the applicants, who shall be residents of such territory, and setting forth the boundaries thereof, with their courses and distances, the quantity of land therein embraced, according to such survey, and the resident population therein contained, according to such census; such survey and map, and such census, and affidavits verifying the same, and an affidavit that they were left and kept, subject to examination, as provided in the fourth section of this chapter, also a copy of the notice of application aforesaid, with an affidavit thereon or affixed thereto, shall be annexed to such petition, otherwise it shall not be acted upon by the court; and it shall be presented at the time specified in such notice for presenting the same, or as soon thereafter as the applicants can be conveniently heard in respect thereto.

Order of court incorporating village

Sec. 8. If such court, after hearing the parties, shall be satisfied that such survey, and that the census taken are correct, that all the requirements of this chapter in respect to such application have been complied with, and that such territory contained, at the time such census was taken, a population as great in proportion to the quantity of land embraced within the bounds thereof, as that specified in the first section of this chapter, it shall make an order declaring that such territory, the boundaries of which shall be therein set forth by courses and distances, shall be an incorporated village, by the name specified in such application, if the electors thereof shall assent thereto, as hereinafter provided; and in such order it shall direct three inspectors of elections of the town or towns in which such territory shall lie, to be named therein, to perform the duties required of them by this chapter; and such order of the court shall be recorded in the office of the register of deeds of such county.

Notice of meeting of electors

Polls how held, &c.

Sec. 9. Such inspectors shall, without unnecessary delay, give notice of a meeting of the elector of the territory described in such order, to be held at some convenient place therein, to be specified in such notice, for the purpose of determining whether such territory shall be an incorporated village. At such meeting the polls shall be opened at ten o'clock in the forenoon, and shall be kept open until four o'clock in the afternoon, when they shall be closed; and the time of opening and closing the same shall be specified in such notice.

Notice how published.

Sec. 10. If there be a newspaper printed in such territory, such notice shall be published therein, once in each week, for three successive weeks previous to such meeting; if there be no newspaper so printed, copies of such notice shall be posted in at least ten of the most public places in such territory, at least three weeks previous to such meeting.

Inspectors to preside, and how meeting conducted.

Sec. 11. Such inspectors shall preside and act as inspectors at such meeting, and all the laws of this state applicable to the election of town officers, shall apply to such meeting and to all the proceedings thereat, so far as the same shall be applicable, and are consistent with the provisions of this chapter.

Who may vote, and how.

Sec. 12. Every elector residing in such territory, and qualified to vote for town officers in the town in which such territory, or some part thereof, shall lie, may vote at such meeting, by a ballot having thereon the word "yes," or the word "no."

When to be deemed a village, and when not.

Certain duties of inspectors.

Sec. 13. If a majority of the ballots given at such meeting shall have thereon the word "no," the electors of such territory shall be deemed not to have assented to the incorporation thereof as a village, and no further proceedings shall be had in respect to such incorporation; but if a majority of such ballots shall have thereon the word "yes," the inhabitants of such territory shall, from the time of the recording of the order of the court aforesaid in the office of the register of deeds, be deemed a body politic and corporate, by the name specified in the order so made by the court; and the inspectors who shall have presided at such meeting shall cause a statement of the holding of such meeting to be made, showing the whole number of ballots given thereat, the number having thereon the word "yes," and the number having thereon the word "no," which statement shall be verified by the affidavit of the said inspectors, written thereon, and shall be filed in the office of the register of deeds of the county; and the said inspectors shall, without unnecessary delay, give notice in the manner prescribed in the tenth section of this chapter, of the time and place of a meeting of the electors of such village, to elect officers thereof: every subsequent notice for the election of officers for such village, shall be given in like manner, by the clerk of said village.

Meetings where held, and when polls opened and closed, &c.

SEC. 14. Such meeting, and every subsequent meeting for the election of officers in such village, shall be held at some convenient place therein; the polls shall be opened at ten o'clock in the forenoon, and shall not be finally closed before four o'clock in the afternoon of the same day, and the time of opening and closing the polls shall be specified in the notice of such meeting.

When trustees to be inspectors, and how elections to be conducted.

SEC. 15. Such inspectors shall preside at such first election, as inspectors thereof; the trustees shall preside as inspectors at every subsequent election, except in cases otherwise provided for by this chapter; and all the laws of this state in relation to the election of town officers, and notifying them of their election, shall apply to such first election, and to all subsequent elections of officers in such village, so far as the same can be so applied, and are consistent with this chapter.

Duties of inspectors.

SEC. 16. The officers presiding as inspectors at such first election, or at any such subsequent election, shall canvass the votes given thereat, shall openly declare the result, and shall make and subscribe a certificate of such canvass, which shall show the whole number of votes given, the number given for each person voted for, and the office for which he shall have been voted for; which certificate shall be recorded in the records of such village.

Who entitled to vote, and to hold office, &c.

SEC. 17. At the first election, and at all subsequent elections of officers in such village, every person residing therein, qualified to vote for town officers in the town in which such village, or any part thereof, shall be situated, may vote for all the officers to be chosen; no person shall be elected as such officer unless he shall be entitled to vote at the election at which he shall be elected; the persons eligible, and having the greatest number of votes shall be declared elected; and if two or more shall have the greatest and an equal number of votes, the officers presiding at the election shall forthwith determine by lot which shall be deemed elected; and in such case the facts shall be set forth in the certificate of the result made by such officers.

Officers to be elected, and their term of office.

SEC. 18. There shall be elected at the first election in such village, and at every subsequent election therein, a president, and six trustees, and any number of assessors, not exceeding three, as may be determined by the electors of said village, who shall hold their offices until the first Monday in April next following their election; and after the first meeting for the election of officers, the annual meeting thereafter for such election shall be held on the first Monday of April in each year, and the officers elected at an annual meeting shall hold their offices for one year, and until others are elected and qualified.

When annual election to be held.

President and trustees.

SEC. 19. The president and a majority of the trustees shall constitute a board for the transaction of business, to be called the "board of trustees;" the president shall preside at all meetings of the board, but shall have only a casting vote therein; it shall be the duty of the board of trustees, within ten days after the first, and within the like number of days after an annual election of officers for such village, to elect by ballot a clerk, treasurer and marshal, who shall hold their respective offices for one year, and until their successors are appointed.

Board to elect clerk, &c.

Officers to be sworn.

SEC. 20. Every officer elected in such village shall, within ten days after he shall be notified of his election, take and subscribe the oath of office prescribed by the constitution, and file the same with the clerk of such village; and in case of his omission to do so, he shall be deemed to have refused to serve, and his place shall be filled in the manner prescribed by this chapter.

Special meetings, how called.

SEC. 21. Special meetings may be called by the clerk of such village, by order of the trustees thereof, or any three of them, by giving ten days notice thereof in a newspaper, if there be one printed in such village, or if there be none, then by posting up such notices in four or more public places in such village; every notice of a special meeting shall state the objects for which such meeting is called.

Vacancies, how filled.

SEC. 22. Any vacancy in the office of president, trustee, or assessor, may be filled at a special meeting called in the manner prescribed in the preceding section, and the trustees of such village, or any two of them, shall preside at such meeting, and shall have all the powers, and perform all the duties of inspectors of said election.

Powers of board of trustees.

SEC. 23. The board of trustees shall have the following powers, to wit:

1. To have a common seal, and alter the same at pleasure:

2. To purchase, hold, or convey any estate, real or personal, for the use of the corporation:

3. To organize fire companies, hook and ladder companies; to regulate their government, and the times and manner of their exercise; to provide all necessary apparatus for the extinguishment of fires; to require the owners of buildings to provide and keep suitable ladders and fire buckets, which are hereby declared to be appurtenances to the real estate, and exempt from seizure, distress, or sale in any manner; and if the owner shall refuse to procure suitable ladders or fire buckets, after reasonable notice, the trustees may procure and deliver the same to him, and in default of payment therefor, may recover of said owner the value of such ladders or fire buckets, or both, with costs of suit; to regulate the storage of gunpowder, and other dangerous materials; to direct the safe construction of a place for the deposit of ashes; and severally enter into, or appoint one or more fire wardens to enter into, at reasonable times, and examine all dwelling houses, lots, yards, enclosures, and buildings of every description, in order to discover whether any of them are in a dangerous condition, and to cause such as may be dangerous to be put in a safe condition; to regulate the manner of putting up stoves and stove pipes; to prevent fires and the use of fire works and fire arms within the limits of said village, or such parts thereof as they may think proper; to compel the inhabitants of said village to aid in the extinguishment

of fires, and to pull, break down, and raze such buildings in the vicinity of the fire as shall be directed by the trustees, or any four of them who may be present at a fire, for the purpose of preventing its communication to other buildings; and any buildings so destroyed shall be paid for by the corporation; to construct and preserve reservoirs, pumps, wells, and other water works, and to regulate the use thereof; and generally to establish other measures of prudence for the prevention or extinguishment of fires as they shall deem proper:

4. To prevent, abate, and remove nuisances, and take such measures for the public health as they may deem proper:

5. To restrain from running at large, cattle, sheep, swine, and geese, in such village, under a penalty not exceeding five dollars for every such animal found so going at large, in violation of the by-laws of such village; to establish pounds and appoint pound masters, and to prescribe their powers and duties:

6. To provide for the protection of shade trees and monuments in said village:

7. To purchase, hold, own, and lay out, grave yards or cemeteries, and regulate the burial of the dead, and to make and enforce any regulation and ordinances relating to the same:

8. To establish and regulate markets, and restrain sales in the streets:

9 To suppress disorderly, lewd, or gaming houses, and devices for gambling:

10. To appoint fire wardens in such village, not exceeding four:

11. To appoint such number of street commissioners as may be necessary:

12. To construct and repair cross walks on the streets of said village:

13. To lay out, open, and keep in repair, grade, pave, or otherwise improve, streets, avenues, lanes, alleys, sewers, and side walks:

14. To prohibit the encumbering of the side walks of said village, with any materials whatever, and riding and driving thereon, except to cross the same:

15. To insure the public property of such village:

16. To direct in the prosecution and defence of suits, in which such village may be a party:

17. To procure the necessary blank books for records, and such stationery as may be required for village purposes:

18. To cause the by-laws and ordinances to be published in a newspaper, if there be one published in such village:

19. To audit and allow all lawful accounts against such village; to draw an order on the treasurer for the payment of every such account allowed by them:

20. To determine the compensation of the assessors, treasurer, clerk, marshal, and street commissioners, subject to the provisions of this chapter:

21. To levy and collect taxes on all such property as shall be subject to town and county taxes; provided, that all taxes in any one year, for corporation purposes, shall not exceed one per cent, on the assessed valuation of taxable property in such village, un-

CHAPTER 52.

less two-thirds of the electors of such village voting at a meeting legally called for that purpose, shall vote to allow a larger sum to be raised, but in no case shall the said electors be allowed to raise more than two per cent on the assessed valuation aforesaid:

22. To prevent horse racing, and immoderate riding or driving in the streets of such village:

23. To prevent the running at large of dogs, by imposing a tax on the same, or otherwise; or to authorize their destruction in a summary manner, when running at large contrary to a by-law or ordinance of such village:

24. To make, pass, ordain, and establish such by-laws, ordinances, and regulations, not repugnant to the constitution of the United States, or the constitution and laws of this state, for the purpose of carrying into effect the provisions of this chapter, as they may deem proper, and to repeal, alter, or amend the same at pleasure; but no such by-law, ordinance, or regulation, shall take effect, or be in force, until the same shall be published three weeks successively in some public newspaper in such village, or posted up the same length of time in three or more public places in such village.

Board may impose fines, &c; may remit same.

Sec. 24. The said board of trustees, as often as they shall make any by-laws, ordinances, or regulations, may ordain and provide such reasonable fines, forfeitures and penalties upon the offenders against the same, as they shall deem proper, not exceeding twenty dollars for any one offence, to be prosecuted before any justice of the peace or court having cognizance thereof, in the name of the corporation; all expenses incurred in prosecuting for the recovery of any penalty or forfeiture, shall be defrayed by the corporation; the said board of trustees shall also have power to remit such fines, forfeitures, or penalties, or any part thereof.

Affidavit of publication and posting notices.

Sec. 25. The affidavit of the printer, of the publication of any notice, by-law, or ordinance, or the affidavit of the clerk of the corporation, of the posting up of any notice, by-law or ordinance, as required in this chapter, shall be sufficient proof in all courts and elsewhere, that such notice, by-law or ordinance, was properly published or posted up.

Auditing claims, &c.

Sec. 26. No account or claim against such village shall be paid until it shall have been presented to the trustees thereof, and audited, and allowed by them; and when any such account or claim shall be so audited, the trustees auditing the same shall indorse thereon, or annex thereto a certificate, subscribed by them, of such auditing and of allowing or disallowing the same, in which the sum allowed, if any, and the charges for which the same was allowed, shall be specified.

How accounts to be made out and sworn to, &c.

Sec. 27. No such account or claim shall be audited or allowed by the trustees, unless it shall be made out in items, and shall be accompanied with an affidavit of the person claiming to have done the services, or made the disbursements therein charged, that the several items of such account or claim are correct, that the services therein charged have been rendered, that the disbursements therein charged have been made, and that no part thereof has been paid: such affidavit shall be indorsed on or annexed to such account or claim, and presented and preserved therewith. Any one of the trustees, when such account or claim shall be presented to them, may administer the oath required in this section; and the said trustees may examine the claimant on oath, as to the items embraced in such account or claim.

Account may be disallowed, or other proof required.

Sec. 28. Nothing in the last preceding section shall be construed to prevent the trustees from disallowing any account or claim, in whole or in part, when so made out and verified, nor from requiring other or further evidence of the correctness and reasonableness thereof.

Accounts to be numbered and entered.

Sec. 29. Every account or claim against such village, presented to the trustees in any year, shall be numbered from number one upwards, in the order in which it shall be presented; and a memorandum of the time of presenting the same, the name of the person in whose favor it shall be made out, and of the person by whom it shall be presented, shall be entered in the records of the proceedings of the trustees.

Warrants, how drawn, &c.

Sec. 30. Every warrant drawn by the trustees to pay any account or claim, shall refer to such account by its number, the name of the person in whose favor it was made out, and the time when it was presented; and a memorandum of such reference, and of the amount of the warrant, shall be entered in such records, before such warrant shall be delivered to the claimant.

What accounts trustees not to allow, &c.

Sec. 31. No trustee shall allow or subscribe a certificate of the allowance of any item in any account or claim against such village, which such village shall not be legally bound to pay, or for the payment of which it could not lawfully raise money therein by tax; nor shall any trustee sign any warrant for the payment of any such account or claim from any fund from which such account or claim, or any part thereof, shall not be payable.

How account shall be paid.

Sec. 32. No such account or claim shall be paid, except by the treasurer, on the warrant of the trustees, indorsed on or annexed to the account or claim for which it shall be drawn.

Account, affidavit and warrant to be filed.

Sec. 33. Whenever any such account or claim shall be paid, it shall, together with the affidavit presented therewith to the trustees, the certificate of auditing and allowing the same, and the warrant drawn for the payment thereof, be filed and preserved in the treasurer's office.

Village not to borrow money, what amount of debt may incur.

Sec. 34. Such village shall have no power to borrow money, nor shall it be liable to pay money borrowed on its account, or advanced in its behalf, by its officers or by any other person, nor shall any of its money or property be applied to any such purpose; nor shall such village incur any debt or liability, in any year, greater than the amount of tax allowed by this chapter to be raised in such village, in the year in which such debt or liability was incurred

Improvement of streets; how tax levied.

Sec. 35. Whenever two-thirds of all the owners of real estate bounding both sides of any street, or part of a street, not less than sixteen rods in length, in any village, shall desire to have such street graded, paved, or otherwise improved, they may make and sign an application in writing to the board of trustees of such village, specifying in such application the sum necessary to be raised for that purpose; and it shall be lawful for the said trustees to levy, and cause to be collected such sum by tax on all the owners of real estate, or lots, on such street, or part of a street; said tax shall be levied on the last assessed valuation of the said real estate and lots respectively, as the same shall appear in the assessment roll of said village.

Same of side walks.

SEC. 36. When two-thirds of all the owners of real estate and lots, bounding on one side of any such street or part of a street, shall desire to have a side walk built or repaired, the application for that purpose shall be made to the trustees by such owners, and the tax for the building or repairing of such side walk shall be levied, as prescribed in the preceding section.

How taxes for improvements may be paid.

SEC. 37. Whenever the trustees shall levy any tax for the purpose of grading, paving, or otherwise improving any street, or for the building or repairing of any side walk, they shall make out, and deliver to a street commissioner of such village, a list of persons and a description of the property taxed; and thereupon the said street commissioner shall notify the persons named in such tax list, by posting up notices in three or more public places in such village, and shall specify in such notices a time or times, not less than twenty days, nor more than forty days from the date thereof, when the persons charged with taxes in such list, may pay their taxes in labor, materials, or money: and the persons charged with such tax, may, at such time and place as may be required by the said street commissioner, pay their taxes in labor or materials, provided the labor or materials offered in payment for such taxes are suitable, and such as may be required by the said street commissioner.

When and how tax list returned.

SEC. 38. At the expiration of forty days from the time the said street commissioner shall have received such tax list, he shall return the same to the trustees accompanied with a statement, verified by his affidavit subscribed to thereon, showing the amount of tax collected in labor and materials, and the amount collected in money, and the manner in which such money was expended, and the items of such expenditure; also, the taxes which remain unpaid, and the persons and descriptions of real estate, or lots, to which such unpaid taxes stand charged.

How unpaid taxes collected, &c.

SEC. 39. The trustees in making out the duplicate assessment roll of such village next thereafter, shall enter such unpaid taxes in a separate column therein, with twelve per cent interest added thereto, opposite the names of the persons and descriptions of property, against which the taxes so remain unpaid; and such taxes shall be collected in the same manner as the general taxes of such village are collected, and when so collected, shall be paid over to a street commissioner on the order of the trustees, to be expended on the street or side walk for which they were originally assessed.

Assessment of damages, &c. on opening and widening of streets.

SEC. 40 Whenever the trustees shall cause any street, lane, or alley to be opened, widened or extended, and damages shall be claimed by any owner of lands on such street, lane, or alley, they shall cause to be summoned six disinterested freeholders, who, being first duly sworn for that purpose, shall inquire into, and take into consideration the benefits, as well as the damages that will be sustained by any persons interested and owning lands or lots on such street, lane, or alley, and shall proceed to estimate the damages and assess the benefits if any, and make return of their determination to the trustees, in writing signed by them; and each parcel of land or lot so assessed as benefited, shall be liable to the amount of such assessment, made by the said freeholders, respectively, and the same shall be a lien on every such parcel of land or lot, in the same manner as the annual village taxes of such village: such assessments shall be levied by the trustees, and when collected, shall be applied by them in the payment of damages allowed by the said freeholders, and the residue of such damages, if any, shall be paid out of the treasury of such village; but no street, lane, or alley, shall be opened, extended, or widened, until the damages aforesaid shall be paid to the persons entitled thereto.

Assessment of damages, how collected.

Sec. 41. The trustees, whenever they shall have levied any such assessment mentioned in the preceding section, shall make out and deliver the list thereof to a street commissioner, who shall collect such assessment within such time as may be required by the said trustees, not less than twenty, nor more than forty days, from the time of the delivery of such list, and pay over the sums so collected to the trustees, to be paid by them to the persons who may be entitled to such damages; and the said street commissioner shall make return, on affidavit subscribed to by him, of the unpaid assessments on such list, and the persons and real estate, or lots against which such unpaid assessments stand charged; and the said trustees shall cause such unpaid assessments to be levied and collected in the same manner as unpaid taxes prescribed in section thirty nine of this chapter; and when so collected, pay the same to the persons so entitled to damages.

When trustees to determine and assess the amount of general tax to be collected.

Sec. 42. The board of trustees shall, between the first Monday in April and the second Monday in June in each year, determine the amount of general tax necessary to be assessed and collected in such village the current year; the assessors, shall within the time above limited, assess all property subject to taxation within the corporate limits of said village, and shall, on or before the first Monday in June in such year, deliver to the board of trustees of said village a full and complete roll thereof; which roll shall exhibit the description and value of the lands, lots, and all other property chargeable with tax, in said village, together with the names of the owners thereof, so far as the same can be ascertained. The assessors shall receive for their services a compensation to be fixed by the by-laws of such village, which shall not exceed the compensation allowed to town assessors for similar services.

Compensation of assessors.

Notice of completion of assessment roll to be given, &c

Sec. 43. Whenever the said assessment roll shall have been delivered to the board of trustees, as mentioned in the preceding section, such board of trustees shall forthwith direct their clerk to give public notice, by posting up notices in three or more public places in said village, of the completion of such roll by the assessors, and shall specify in said notice the time when, and the place where, the said trustees will meet, to hear appeals from the proceedings of such assessors; on any such appeal being made to the said trustees, they shall have power to alter and correct such assessment roll.

CHAPTER 52.

Trustees to complete assessment roll and issue warrant, &c.

SEC. 44. When such assessment roll shall be finally completed, the trustees shall cause to be levied such amount of tax as shall have been determined to be raised, and shall set opposite to each description and valuation of taxable property, the amount of tax charged upon such property, and to each person respectively; and when such tax list shall have been so completed, they shall forthwith cause a true copy thereof to be made, and a warrant annexed thereto, and deliver such tax list and warrant to the marshal of such village, as hereinafter provided, and the original assessment roll and tax list shall be deposited with the treasurer of said village.

Warrant to be signed by president and clerk; what warrant to contain and may be renewed.

SEC. 45. The warrant annexed to any tax list delivered to the marshal as aforesaid, shall be signed by the president and clerk of such village, or, in the absence of the president, such warrant shall be signed by a majority of the trustees; such warrant shall command the marshal to collect the taxes mentioned in such tax list in sixty days, and pay over the same to the treasurer of said village, and make return of said warrant to the said treasurer; the trustees may renew the warrant annexed to any tax list for thirty days, when they shall deem it necessary, but any such warrant shall be so renewed but once.

Marshal to execute bond.

SEC. 46. Before the marshal of such village shall receive any warrant for the collection of taxes, he shall execute to such village by its corporate name, and deliver to the treasurer thereof, a bond with sufficient sureties, to be approved by a certificate of approval signed by the trustees indorsed thereon, conditioned for the faithful performance of his official duties; and if he shall neglect to execute and deliver to the treasurer such bond, within three days after being notified by the trustees so to do, his office shall be deemed vacant.

Compensation of marshal

SEC. 47. Such marshal shall receive for his services a compensation to be fixed by the by-laws of such village, which shall not exceed the compensation allowed to town treasurers for the collection of town taxes.

Marshal to give notice of tax list and of time and place taxes are to be paid, &c.

SEC. 48. Upon the receipt of the tax list aforesaid, it shall be the duty of the marshal to give public notice in a newspaper published in said village, or by posting notices in three public places therein, that such tax list has been committed to him for collection, and that he will receive payment for taxes at his office for the term of two months next ensuing such notice; and all taxes paid during said two months shall be subject to a deduction of four per centum upon the amount paid.

When taxes to be collected by distress and sale.

SEC. 49. If the taxes are not paid to the marshal within the said term, he may then proceed to collect the same by distress and sale of the goods and chattels of the person charged, wherever found in such village, giving six days notice of the time and place of such sale, by written notices set up in three public places in said village.

Marshal to pay over money and return warrant.

SEC. 50. It shall be the duty of such marshal, within the time prescribed in any such warrant for the return thereof, to pay over all sums collected by him to the treasurer of such village, and to return such warrant to the said treasurer with his return thereon written, subscribed by him, and specifying any such sum or sums of money not collected by him, by reason of his being unable to find property in such village, out of which he could collect the same; and if any sum be returned not collected by him, his return shall be accompanied by his affidavit that the facts therein stated are true.

When treasurer to advertise lots on which taxes not paid, &c.

SEC. 51. In case the tax on any lot or other parcel of land shall remain unpaid on the first day of October, and no goods or chattels shall have been found out of which to collect the taxes levied on any lot or lots, or other pieces of land, it shall be the duty of the treasurer, within ten days thereafter, to make out a general advertisement, stating that all lots or other pieces of land, upon which the taxes have not been paid, will be sold by him, at a certain time and place therein mentioned, for the purpose of paying the taxes which may be assessed thereon, together with all costs and other liabilities which may accrue by advertisement and sale agreeably to the provisions of this chapter. Said advertisement shall be published three weeks successively, in a newspaper published in said village, if there be one, and if not, then by posting up such advertisement in three public places in said village.

Treasurer to sell lands; to give certificate.

SEC. 52. On the day, and at the time and place, mentioned in the notice, the treasurer shall commence the sale of lands and lots, and continue the same from day to day, until so much thereof shall be sold as will pay the taxes, interest and charges due, assessed and charged thereon, agreeably to this chapter, and the treasurer shall give to the purchaser or purchasers of any lots of land, a certificate of the lots or lands purchased, stating the sum paid therefor, including fees, and the time when the purchaser will be entitled to a deed for the same.

Treasurer to file with clerk all papers relative to tax sales, &c.

SEC. 53. Such treasurer shall, immediately after the close of any such sale of lots or lands for taxes, deposit in the office of the clerk of said village all affidavits, notices and papers in relation to such tax sale, to be filed and preserved in the office of such clerk; also a statement, containing a particular description of each lot or parcel of land so sold by him, specifying the name of the person to whom sold, the amount for which the same was sold, and the name of the owner, if known; and the said treasurer and clerk shall record such statement in a book, to be kept by each of them for that purpose, in their respective offices.

When treasurer may execute deed to purchaser; effect of conveyance and how executed.

SEC. 54. If the person claiming the title to the lots or lands so sold and described in such certificate given by the treasurer, shall not, within two years from the date thereof, pay to the treasurer for the use of the purchaser, his heirs or assigns, the sum mentioned in said certificate, together with the interest thereon, at the rate of twenty-five per centum per annum, from the date of such certificate, the treasurer shall, at the expiration of said two years, execute to the purchaser, his heirs or assigns, a conveyance of the lots or lands so sold, which conveyance shall vest in the person or persons, to whom the same shall be given, an absolute estate in fee simple; and the said conveyance shall be evidence that the sale was regular according to the provisions of this chapter, and any such conveyance executed by the treasurer, under his hand and the seal of the corporation, in the name and on behalf of said village, and the execution thereof witnessed and acknowledged as by law in other cases provided, may be given in evidence and recorded, in the same manner, and with the like effect, as a deed regularly acknowledged by the grantor may be given in evidence.

Treasurer to give notice of forfeiture of lots.

SEC. 55. In all cases, before lands shall be conveyed as aforesaid; the treasurer shall advertise the same by a correct description thereof, for three months, in some paper published in said village, or by written notices, as prescribed by section fifty one of this chapter, stating that all such lands or lots will be forfeited if the taxes and charges upon the same are not paid before the day mentioned in such notice.

Fees on advertisment and sale of lots.

SEC. 56. All lots or lands, which shall be advertised for sale for non-payment of taxes, shall be subject to a charge of three cents for each lot or piece of land so advertised, for the first advertisement, and each lot or piece of land which shall be sold as aforesaid, shall be chargeable with the following fees: for each certificate to be given to a purchaser of any lot of land at such sale, twelve and one half cents; for certifying the amount necessary to redeem any lot or piece of land, twelve and a half cents; and one dollar for each conveyance executed in pursuance of this chapter; the said fees to be paid by the persons receiving such instrument. The charge for advertising the forfeiture of a piece of land shall be ten cents for each lot or parcel.

Taxes paid by purchaser to be refunded on redemption.

SEC. 57. If any person who shall purchase any lot in pursuance of this chapter, shall pay any tax returned subsequent to such purchase, on such lot or piece of land, the person who shall redeem such lot or piece of land, shall pay to the treasurer the amount of tax, with interest at the rate of twenty-five per cent, per annum, for the benefit of such purchaser.

Treasurer to execute bond.

SEC. 58. Before the treasurer of such village shall enter upon the duties of his office, he shall execute to such village by its corporate name, and deliver to the trustees thereof, a bond with sufficient sureties, to be approved by them by a certificate of such approval signed by them and indorsed thereon, conditioned for the faithful performance of his official duties; and if he shall neglect to execute and deliver to the trustees such bond within three days after being notified by the president to do so, his office shall be vacant.

Duties of treasurer.

SEC. 59. Such treasurer shall receive and safely keep, and he shall pay out, when lawfully required to do so, all moneys belonging to such village; he shall keep accounts of all such moneys as by law he shall be required to keep; he shall preserve all vouchers filed in his office; he shall comply with every law of this state, and with every by-law of such village legally adopted, in respect to his duties; and he, or in case of his death, his executors or administrators, shall, on demand, deliver to his successor in office, on oath, all books and vouchers belonging to his office, and all money in his or their custody, belonging to such village.

How treasurer to keep his accounts.

SEC. 60. The treasurer shall so keep his accounts, as to show when, and from what sources, all moneys paid to him shall have been received, and when, and to whom, and for what purpose, all moneys paid out by him, shall have been paid.

To keep separate account of funds.

SEC. 61. When any money shall be raised by tax in such village for any specific purpose, the treasurer shall keep a separate account in respect to such money, which shall show the amount thereof received by him, and when, and to whom, any portion thereof shall have been paid.

To exhibit his books of account &c.

SEC. 62. The treasurer shall exhibit his books of accounts and vouchers, at every annual meeting of the electors of such village, and at every special meeting thereof, when required to do so by the president or any trustee; they shall at all times be open to the inspection of the president or any one or more of the trustees; and whenever required by the trustees, he shall furnish abstracts or statements therefrom for their use, or to be presented to any such meeting.

Compensation of treasurer.

SEC. 63. The treasurer shall receive such compensation for his services as shall be fixed by the by-laws of such village, not exceeding the compensation allowed to county treasurers for similar services.

Duties of clerk.

SEC. 64. The clerk of such village shall have the custody of, and shall safely keep all the records, books, and papers thereof, except such as shall pertain to the treasurer's office or to the business thereof, and of which the treasurer should have the custody; he shall attend all meetings of the trustees and record all their proceedings; he shall file all papers, and record all matters which he shall, by law, or by the by-laws of such village, be required to file or record; he shall attend all meetings of the electors of such village, and keep a poll list at such meetings when required by the trustees to do so; and he, or in case of his death, his executors or administrators, shall, on demand, deliver to his successor in office, on oath, all records, books, papers, and other property of such village, in his or their custody.

What clerk to record &c.

SEC. 65. The clerk shall record in such records, a copy, certified by the register of deeds, of the order, made by the court, and filed in the said register's office, to incorporate such village, which shall, when so recorded, be presumptive evidence of the facts therein stated; he shall also record the by-laws of such village; all votes, ordinances, and resolutions adopted by the trustees; the auditing and allowance or disallowance of every account or claim presented to them; the drawing of every warrant by the trustees upon the treasurer; the number thereof, and of the account for which it shall be drawn; all appointments made by the trustees, all of which shall be by resolution; and all other matters which shall be proper to be recorded in the records of such village, or which the trustees shall, by by-laws, direct to be so recorded; and he shall file in his office every account and claim which shall be disallowed by the trustees.

Compensation of clerk.

SEC. 66. The clerk shall perform such other duties as shall be lawfully imposed upon him by the by-laws of such village, and he shall receive a compensation for his services to be fixed by such by-laws, which shall not exceed the compensation allowed to town clerks for similar services.

Powers and duties of marshal.

SEC. 67. The marshal of such village shall possess the powers, be subject to like liabilities, and enjoy the same privileges, as are possessed, and conferred by law upon constables; he shall collect the general taxes assessed in such village, and execute such legal orders as may be required of him by the trustees.

Duties of fire wardens.

Sec. 68. The fire wardens shall, from time to time, examine the fire engines, fire buckets, and other apparatus for extinguishing fires in such village, and report their condition to the trustees; they shall attend such fires, and give directions in respect to the manner of extinguishing the same, and it shall be the duty of all persons who shall be required to assist in extinguishing such fires, to obey such directions; they may, in the day time, enter any building in such village in which there shall be a fire place, stove or stove pipe, for the purpose of examining the same; they may also, in the day time, enter upon any premises in such village, for the purpose of ascertaining whether ashes are safely kept thereon; and if they shall find any fire place, stove, stove pipe, or place of keeping ashes, unsafe, they shall report the same to the trustees.

Duties of street commissioners and their compensation.

Sec. 69. The street commissioners of such village shall, under the direction of the trustees, superintend the grading, paving, and improving of streets, and the building and repairing of side-walks, and the expenditure of taxes levied and collected for such purposes; they shall receive such compensation for their services as may be allowed by the trustees.

Inhabitants of village liable to ordinary highway taxes &c.

Sec. 70. Nothing contained in this chapter, shall exempt the inhabitants of any village from the payment of highway taxes, legally assessed by the supervisors of the town in which such village may be situate, nor from the formation of such village into one or more road districts, irrespective of its corporate limits, by such supervisors.

Trustees to publish annual statement of claims allowed.

Sec. 71. Within ten days next preceding every annual meeting of the electors of such village, if there be a public newspaper printed therein, the trustees shall cause to be published in such paper, and if there be none, they shall cause to be posted in two of the most public places in such village, a statement which shall show the name of every person who shall have had an account or claim allowed by them, the amount of such account or claim as presented; the amount allowed, and a brief statement of the nature of the demand. The first statement so published or posted, shall embrace all accounts allowed to the time of publishing or posting the same, from the time of the incorporation of such village, and each subsequent statement shall embrace all accounts allowed to the time of publishing or posting the same, from the time of publishing or posting the last preceding statement.

General laws to apply to villages.

Sec. 72 All the general laws of this state applicable to incorporated villages, and to the officers thereof, shall apply to villages incorporated under the provisions of this chapter and the officers thereof, so far as the same can be so applied and are consistent with the provisions of this chapter.

Proceedings on application to dissolve village corporation.

Sec. 73. When an application in writing, signed by at least one third as many persons entitled to vote for village officers in any incorporated village, as voted for such officers at the next preceding election thereof, shall be made to the trustees of such village, to call a meeting of the electors thereof to determine whether the same shall continue to be an incorporated village, such trustees shall call such meeting, and preside as inspectors thereat, and the same shall be notified and held, the votes given thereat canvassed, the result declared, and a certificate thereof made and recorded in the same manner, as nearly as practicable, as in case of the election of village officers.

Polls at meeting how to be conducted.

Sec. 74. The polls at such meeting shall be kept open from ten o'clock in the forenoon to four o'clock in the afternoon; and every such elector may vote thereat, by a ballot having thereon the word "yes" or the word "no;" if a majority of all the ballots given shall have thereon the word "no," such village shall, at the expiration of six months from the time of holding such meeting, cease to be an incorporated village, and within that period such trustees shall call a special meeting of such electors, to direct as to the disposition of the property of such village; and at such meeting, such electors may direct such property as shall remain, after paying all claims for which such village shall be liable, to be disposed of as they shall deem proper.

Proceedings if corporation dissolved.

Records, &c., where to be deposited; town supervisors to be trustees of village property, &c.

Sec. 75. At the expiration of the said six months, all the records, books, and papers belonging to such village, shall be deposited with the town clerk of the town in which the same shall be located, or if located in more than one town, then with the town clerk of one of such towns, whose duty it shall be to preserve the same with the town records and papers of his town, and the supervisors of such town, or if such village was located in more than one town, the supervisors of such towns shall be the trustees of the property of such village. No suit in which such village shall be a party, nor any claim for or against such village, shall be affected by its ceasing to be an incorporated village.

Tax to pay debts may be raised after corporation dissolved.

Sec. 76. At the meeting to be called after any such village shall have determined to dissolve its incorporation, it shall be lawful to raise by tax any sum that may be necessary to pay and discharge all the existing debts and liabilities of the said village.

Provisions of this chapter when to apply to villages now incorporated.

Sec. 77. The electors of any village now incorporated, qualified to vote for officers therein, may, at any annual meeting, at which such officers shall be elected, declare by a resolution, that any of the sections of this chapter, to be specified in such resolution, shall apply to such village; and from and after twenty days from the adoption of any such resolution, the sections of this chapter which shall be therein declared to apply to such village, shall apply to the same, and all laws inconsistent with the sections specified in such resolution, shall have no force or effect in respect to such village.

Trustees to publish notice of the adoption of any provisions of this chapter.

Sec. 78. Whenever any resolution shall be adopted in any village, pursuant to the preceding section, the trustees of such village shall, within ten days thereafter, cause such resolution, together with the section of this chapter specified therein, to be published in a newspaper printed in such village, if there be one, if there be none; then in the newspaper printed nearest to such village.

CHAPTER 53.

OF ELECTRIC TELEGRAPH LINES.

Who may construct telegraph lines, and how.

SECTION 1. Any person or persons, and their successors, who may have the legal right so to do, under the laws of congress, and patents issued in pursuance thereof, may be, and they are hereby authorized to construct and maintain lines of electric telegraph, together with all necessary fixtures appurtenant thereto, from point to point, upon and along any of the public roads or highways, or across any of the waters or bridges within the limits of this state, or upon the land of any individual, the owners of the land through which said telegraph lines may pass, having first given their consent: Provided, that the same shall not in any instance be so constructed as to incommode the public in the use of roads or highways and bridges, or endanger or injuriously interrupt the navigation of said waters.

Communications to have precedence in the order they are received.

SEC. 2. At any telegraph office established for the purpose of communicating intelligence on any of the lines constructed by virtue of the provisions contained in the foregoing section, communications received for the transmission of intelligence upon any of said lines shall have precedence in the order in which they are received, and any violation of the provisions of this section by any officer, person or persons having charge of, or employed in conducting or transacting the business of said office, shall be punished by fine of not less than fifty dollars, nor exceeding one hundred dollars, at the discretion of the court having cognizance of the same.

Tax to be paid by owners.

SEC. 3. The owner or owners of any telegraphic line constructed under the provisions of this chapter, shall pay to the state an annual tax of twenty-five cents upon every mile in length so constructed, in lieu of all other taxes, which shall be paid in the last week in January in each year, to the state treasury.

State to have a lien on line for tax; treasurer may sell same.

SEC. 4. The state shall have a lien upon any line constructed as aforesaid, and its appurtenances, for all taxes which may accrue thereon to the state, by virtue of the provisions of the foregoing section, and in case the tax, or any part thereof, shall remain unpaid at the time hereinbefore provided for its payment, the state treasurer shall have power, and it is hereby made his duty to advertise such line for sale, for the amount of each tax remaining unpaid, in some newspaper published at the seat of government, by giving three weeks previous notice, and to sell the same accordingly for the amount of tax and interest and charges of sale; provided, the same shall not be paid before the time of sale. And the surplus money, if any, shall be paid to the owner or owners of said line, after deducting the expenses of advertising and selling the same.

Penalty for injuring lines

SEC. 5. Any person or persons who shall knowingly or wilfully injure, molest, or destroy any of said lines, or appurtenances belonging thereto, and any person who shall counsel or advise the injury, molestation or destruction of any of said lines, or appurtenances thereto belonging, shall be deemed guilty of a misdemeanor, and be punished by fine not exceeding one hundred dollars, or imprisonment not exceeding one year, or both, at the discretion of the court having cognizance thereof.

CHAPTER 54.

GENERAL PROVISIONS RELATING TO CORPORATIONS.

General powers of corporations.

SECTION 1. All corporations shall, when no other provision is specially made, be capable, in their corporate name to sue and be sued, appear, prosecute, and defend all actions and causes to final judgment and execution, in any courts, or elsewhere; to have a common seal, which they may alter at pleasure; to elect, in such manner as they shall determine to be proper, all necessary officers, and to fix their compensation, and define their duties and obligations; and to make by-laws and regulations consistent with the laws of the state, for their own government, and for the due and orderly conducting of their affairs, and the management of their property.

May make by-laws for certain purposes, and impose penalties.

SEC. 2. All corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting their meetings, the number of members that shall constitute a quorum, the number of shares that shall entitle the members respectively to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of assessments, and the tenure of office of the several officers; and they may prescribe suitable penalties for the violation of their by-laws, not exceeding in any case twenty dollars for any one offence.

First meeting, how called.

SEC. 3. The first meeting of every corporation, when no other provision is specially made, shall be called by a notice signed by one or more of the persons named in, or associated as corporators under the law by which it is incorporated, setting forth the time, place, and purposes of the meeting; and such notice shall, at least twenty days before the meeting, be delivered to each member, or published in some newspaper of the county where the corporation shall be established, or if no newspaper be published in the county, then in some newspaper published in an adjoining county.

When justice may call meeting, and how.

SEC. 4. Whenever, by reason of the death, absence, or other legal impediment of the officers of any corporation, there shall be no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace of the county where such corporation is established may, on a written application of three or more of the members thereof, issue a warrant to either of the said members, directing him to call a meeting of the corporation, by giving such notice as shall have been previously required by law; and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk shall be duly chosen and qualified, if there shall be no other officer present legally authorized to preside thereat.

When meeting valid though not called.

SEC. 5. When all the members of a corporation shall be present at any meeting, however called or notified, and shall sign a written consent thereto on the record of such meeting, the doings of such meeting shall be as valid as if legally called and notified.

Powers of members when so assembled.

SEC. 6. The members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

May hold and convey lands and transfer shares, and how.

SEC. 7. Every such corporation may hold land to an amount authorized by law, and may convey the same; and whenever the capital stock of any such corporation is divided into shares, and certificates thereof are issued, such shares may be transferred by indorsement and delivery of the certificates thereof, such indorsement being by the signature of the proprietor, or his attorney or legal representative; but such transfer shall not be valid, except between the parties thereto, until the same shall have been so entered on the books of the corporation, as to show the names of the parties by and to whom transferred, the number and designation of the shares, and the date of the transfer.

How long corporations to continue and for what purpose after dissolution.

SEC. 8. All corporations whose charters shall expire ~~by their~~ by their own limitation, or shall be annulled by forfeiture or otherwise shall nevertheless continue to be bodies corporate, for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established.

When circuit court may appoint receivers of corporation.

SEC. 9. When the charter of any corporation shall expire or be annulled, as provided in the preceding section, the circuit court of the county in which such corporation carries on its business, or has its principal place of business, on application of any creditor of such corporation, or of any stockholder or member thereof, at any time within the said three years, may appoint one or more persons to be receivers or trustees of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with the same powers, and who shall perform the same duties as receivers appointed as provided by law upon the voluntary dissolution of corporations; and the power of such receivers may be continued beyond the said three years, and as long as the court shall think necessary.

Circuit court to have chancery powers in such cases.

SEC. 10. The said court shall have jurisdiction in chancery of such application, and of all questions arising in the proceedings thereon, and may make such orders, injunctions, and decrees thereon, as justice and equity shall require.

Franchises and property of corporations authorized to receive toll may be taken and sold on execution.

SEC. 11. When any judgment shall have been recovered against any turnpike, or other corporation authorized to receive toll, the franchises of such corporation, with all the rights and privileges thereof, together with all their corporate property, both real and personal, may be taken on execution, and sold at public auction.

Proceedings of officer on execution.

SEC. 12. The officer having such execution against any corporation mentioned in the preceding section, shall, thirty days, at least, before the day of sale of the franchise or other corporate personal property, give notice of the time and place of sale, by posting up a notice thereof in any town in which the clerk, treasurer, or any one of the directors of such corporation may dwell, and also by causing an advertisement of the sale, expressing the name of the creditor, the amount of the execution, and the time and place of sale, to be inserted three weeks successively in some newspaper published in any county in which either of the aforesaid officers may dwell, if any such there be, and if no newspaper be published in any such county, then in the newspaper published nearest thereto.

May adjourn sale

Sec. 13. The officer who may levy any execution, as prescribed in the preceding section, may adjourn the sale from time to time as may be necessary, until the sale shall be completed.

Who to be considered the highest bidder.

Sec. 14. In the sale of the franchise of any corporation, the person who shall satisfy the execution, with all legal fees and expenses thereon, and shall agree to take such franchise for the shortest period of time, and to receive during that time all such toll as the said corporation would by law be entitled to demand, shall be considered as the highest bidder.

Officer to deliver possession to purchaser, and his right to receive toll.

Sec. 15. The officer's return on such execution shall transfer to the purchaser all the privileges and immunities which by law belonged to such corporation, so far as relates to the right of demanding toll; and the officer shall, immediately after such sale, deliver to the purchaser possession of all the toll houses and gates belonging to such corporation, in whatever county the same may be situated; and the purchaser may thereupon demand and receive all the toll which may accrue during the time limited by the terms of his purchase, in the same manner, and under the same regulations, as such corporation was before authorized to demand and receive the same.

Power of purchaser and his assigns to recover penalties.

Sec. 16. Any person who may have purchased, or shall hereafter purchase under the provisions of this chapter, the franchise of any turnpike or other corporation, and the assignees of such purchaser, may recover in an action on the case, any penalties imposed by law, for an injury to the franchise, or for any other cause, and which such corporation would have been entitled to recover, during the time limited in the said purchase of the franchise; and during that time the corporation shall not be entitled to prosecute for such penalties.

Liabilities of corporation after sale.

Sec. 17. The corporation, whose franchise shall have been sold as aforesaid, shall, in all other respects, retain the same powers, and be bound to the discharge of the same duties, and liable to the same penalties and forfeitures, as before such sale.

How corporation may redeem franchise.

Sec. 18. Such corporation may, at any time within one year after such sale, redeem the franchise, by paying or tendering to the purchaser thereof the sum that he shall have paid therefor, with twelve per cent interest thereon, but without any allowance for the toll which he may have received; and upon such payment or tender, the said franchise, and all the rights and privileges thereof, shall revert and belong to said corporation, as if no such sale had been made.

Corporation liable to warrant of distress for damages assessed.

Sec. 19. Whenever any damages may have been or may hereafter be assessed, in favor of any person, for any injury sustained in his property by the doings of any such turnpike or other corporation authorized to receive toll, or pay for the transportation of persons or property, and the said damages shall remain unpaid for the space of thirty days after such assessment, such person may have a warrant of distress against such corporation, for the damages assessed, together with interest thereon, and his reasonable costs, and the same proceedings shall be had thereon, and with the same effect, as upon an execution issued upon a judgment against such corporation.

In what county proceedings on execution may be had.

SEC. 20. All the proceedings aforesaid respecting the levy of executions, may be had in any county in which either the creditor, or the president, or any director, or the treasurer or clerk of the corporation may reside, or in which such corporation has personal or real estate.

Proceedings against corporations or its members, or for contribution, may be in law or equity.

SEC. 21. When the officers or members of a corporation, or any of them, are liable for any debts of the corporation, or for any acts of such officers or members, respecting the business of the corporation, and also when any of the said officers or members shall be liable to contribute, for money paid by any other or others of them, on account of any such debts or acts, the money may be recovered by a bill in chancery; and the said court may make all such orders and decrees therein, as may be necessary to do justice between the parties; but nothing in this section contained, shall prevent suit in any such case from being brought in a court of law.

Powers and duties of attorney general relative to examining into condition of corporations.

SEC. 22. It shall be the duty of the attorney general, whenever and as often as shall be required by the governor, to examine into the affairs and condition of any corporation in this state, and report such examination in writing, together with a detailed statement of facts, to the governor, who shall lay the same before the legislature; and for that purpose the said attorney general shall have power to administer all necessary oaths to the directors and officers of any corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition; and the legislature, or either branch thereof, shall have full power to examine into the affairs and condition of any corporation in this state, at all times; and for that purpose, any committee appointed by the legislature, or either branch thereof, shall have full power to administer all necessary oaths to the directors, officers, and stockholders of such corporation, and to examine them, on oath, in relation to the affairs and condition thereof, and to examine the vaults, safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and to compel the production of all keys, books, papers and documents, by summary process, to be issued on application to any court of record, or any judge thereof, under such rules and regulations as the said court may prescribe

Same as to committee appointed by legislature.

TITLE XIV.

CHAPTER 55.

OF SEALS.

SECTION 1. The description in writing of the great seal of the State shall be deposited and recorded in the office of the secretary of state, and shall remain a public record, and shall be and continue the description of the great seal of the state; and the person administering the government of the state shall have the custody of the said seal, and all such matters and things as issue under the said seal shall be entered of record in the office of the secretary of state.

SEC. 2. It shall be, and hereby is made the duty of the board of supervisors of the several counties of the state, to provide and furnish seals for such of the several circuit, county and probate courts, as are now unprovided with the same, and with such inscriptions and devices as the said courts shall respectively require.

SEC. 3. When any court of record shall be unprovided with a seal, the judge of said court may authorize the use of any temporary seal, or of any device by way of seal, until the same shall be provided as aforesaid.

SEC. 4. Any instrument to which the person making the same shall affix any device by way of seal, shall be adjudged and held to be of the same force and obligation as if it were actually sealed.

SEC. 5. The great seal of the territory of Wisconsin is hereby adopted and declared to be the great seal of the state of Wisconsin, until another shall be prepared and adopted in its stead.

PART II.

OF REAL PROPERTY, OF THE ACQUISITION, THE ENJOYMENT AND TRANSMISSION OF PROPERTY, REAL AND PERSONAL, THE DOMESTIC RELATIONS, AND OTHER MATTERS CONNECTED WITH PRIVATE RIGHTS.

TITLE XV.

OF REAL PROPERTY, AND OF THE NATURE, QUALITIES AND ALIENATION OF ESTATES THEREIN.

CHAPTER 56. Of the nature and qualities of estates in real property, and the alienation thereof.
57. Of uses and trusts.
58. Of powers.
59 Of alienation by deed, of the proof and recording of conveyances, and the canceling of mortgages.
60. Of recording contracts relating to land.
61. Of the appointment of commissioners to take the acknowledgment of deeds, &c., in other States.
62. Of estates in dower, by the curtesy, and general provisions concerning real estate.

CHAPTER 56.

OF THE NATURE AND QUALITIES OF ESTATES IN REAL PROPERTY, AND THE ALIENATION THEREOF.

SECTION 1. Estates in lands are divided into estates of inheritance, estates for life, estates for years, and estates at will and by sufferance.

Enumeration of estates in lands.

SEC. 2. Every estate of inheritance shall continue to be termed a fee simple, or fee; and every such estate, when not defeasible or conditional, shall be a fee simple absolute, or an absolute fee.

What estate a fee simple.

SEC. 3. In all cases where any person or persons would, if this act had not been passed, at any time hereafter become seised in fee tail, of any lands, tenements or hereditaments, by virtue of any devise, gift, grant, or other conveyance heretofore made, or hereafter to be made, or by any other means whatsoever, such person or persons, instead of becoming seised thereof in fee tail, shall be deemed and adjudged to be seised thereof as an allodium.

When persons entitled to estate in fee tail shall hold an allodial estate.

SEC. 4. Where lands, tenements or hereditaments heretofore have been devised, granted, or otherwise conveyed by a tenant in tail, and the person or persons to whom such devise, grant or other conveyance hath been made, his, her, or their heirs, or assigns,

Conveyances by tenant in tail, to convey allodial estate in certain cases.

hath or have from the time such devise took effect, or from the time such grant or other conveyance was made, to the day of passing this act, been in the uninterrupted possession of such lands, tenements or hereditaments, and claiming and holding the same under or by virtue of such devise, grant, or other conveyance, they shall be deemed as good, legal and effectual, to all intents and purposes, as if such tenant in tail had, at the time of making such devise, grant or other conveyance, been seised of such lands, tenements or hereditaments, allodially, any law to the contrary hereof notwithstanding.

Freeholds; chattels real; chattel interests.

Sec. 5. Estates of inheritance and for life shall be denominated estates of freehold; estates for years shall be denominated chattels real; and estates at will or by sufferance shall be chattel interests, but shall not be liable as such to sale on executions.

Estates for life of third persons, when freehold, &c.

Sec. 6. An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real.

Estates in possession, and in expectancy.

Sec. 7. Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy.

Definition of those estates.

Sec. 8. An estate in possession, is where the owner has an immediate right to the possession of the land; an estate in expectancy is where the right to the possession is postponed to a future period.

Enumeration of estates in expectancy.

Sec. 9. Estates in expectancy are divided into,

1. Estates commencing at a future day, denominated future estates; and

2. Reversions.

Future estates

Sec. 10. A future estate, is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination by lapse of time or otherwise, of a precedent estate, created at the same time.

When they are remainders.

Sec. 11. When a future estate is dependent upon a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

Reversions

Sec. 12. A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised.

Vested and contingent future estates.

Sec. 13. Future estates are either vested or contingent:

They are vested when there is a person in being who would have an immediate right to the possession of the lands upon the ceasing of the intermediate or precedent estate:

They are contingent whilst the person to whom, or the event upon which they are limited to take effect, remains uncertain.

Void future estates; suspending powers of alienation.

Sec. 14. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation for a longer period than is prescribed in this chapter: such power of alienation is suspended, when there are no persons in being, by whom an absolute fee in possession can be conveyed.

How long power of alienation may be suspended.

Sec. 15. The absolute power of alienation shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance of two lives in being at the creation of the estate, except in the single case mentioned in the next section.

Contingent remainder in fee.

Sec. 16. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited shall die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain their full age.

Limitation of successive estates for life.

Sec. 17. Successive estates for life shall not be limited, unless to persons in being at the creation thereof; and when a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto, shall be void, and upon the death of those persons, the remainder shall take effect, in the same manner as if no other life estate had been created.

Remainder upon certain estates for life.

Sec. 18. No remainder shall be created upon an estate for the life of any other person or persons than the grantee or devisee of such estate, unless such remainder be in fee; nor shall any remainder be created upon such an estate in a term for years, unless it be for the whole residue of the term.

When remainder to take effect in certain cases.

Sec. 19. When a remainder shall be created upon any such life estate, and more than two persons shall be named as the persons during whose lives the estate shall continue, the remainder shall take effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced.

Contingent remainder on a term for years.

Sec. 20. A contingent remainder shall not be created on a term for years, unless the nature of the contingency upon which it is limited be such that the remainder must vest in interest, during the continuance of not more than two lives in being at the creation of such remainder, or upon the termination thereof.

Remainder of estates for life.

Sec. 21. No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

Meaning of heirs and issue in certain remainders.

Sec. 22. When a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

Limitations on chattels real.

Sec. 23. All the provisions in this chapter contained relative to future estates, shall be construed to apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended, in respect to a fee.

Remainders and future estates, how created.

Sec. 24. Subject to the rules established in the preceding sections of this chapter, a freehold estate as well as a chattel real may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon.

Two or more future estates.

Sec. 25. Two or more future estates may also be created, to take effect in the alternative, so that if the first in order should fail to vest, the next in succession shall be substituted for it, and take effect accordingly.

Certain future estates not to be void

SEC. 26. No future estate, otherwise valid, shall be void on the ground of the probability or improbability of the contingency on which it is limited to take effect.

Remainder upon a contingency.

SEC. 27. A remainder may be limited on a contingency, which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder shall be construed a conditional limitation, and shall have the same effect as such a limitation would have by law.

Heirs of tenant for life, when to take as purchasers.

SEC. 28. When a remainder shall be limited to the heirs, or heirs of the body of a person to whom a life estate in the same premises shall be given, the persons who, on the termination of the life estate shall be the heirs, or heirs of the body of such tenant for life, shall be entitled to take as purchasers, by virtue of the remainder so limited to them.

Construction of certain remainders.

SEC. 29. When a remainder on an estate for life, or for years, shall not be limited on a contingency, defeating or avoiding such precedent estate, it shall be construed as intended to take effect only on the death of the first taker, or the expiration, by lapse of time of such term of years.

Posthumous children entitled to take.

SEC. 30. When a future estate shall be limited to heirs, or issue, or children, posthumous children shall be entitled to take, in the same manner as if born before the death of the parents.

Birth of same, when to defeat future estate.

SEC. 31. A future estate, depending on the contingency of the death of any person without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

Expectant estates not to be defeated, &c.

SEC. 32. No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate by disseizin, forfeiture, surrender, merger or otherwise.

When expectant estate may be defeated.

SEC. 33. The last preceding section shall not be construed to prevent an expectant estate from being defeated in any manner, or by any act or means which the party creating such estate shall, in the creation thereof, have provided or authorized; nor shall an expectant estate thus liable to be defeated, be on that ground adjudged void in its creation.

Remainder not to be defeated in certain cases.

SEC. 34. No remainder, valid in its creation, shall be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder is limited to take effect; but should such contingency afterwards happen, the remainder shall take effect in the same manner, and to the same extent, as if the precedent estate had continued to the same period.

Qualities of expectant estates.

SEC. 35. Expectant estates are descendible, devisable and alienable, in the same manner as estates in possession.

Future profits of lands, dispositions of, how governed.

SEC. 36. Dispositions of the rents and profits of lands, to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this chapter, in relation to future estates in lands.

Accumulation of the profits of lands.

SEC. 37. An accumulation of rents and profits of real estate, for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real estate, as follows:

1. If such accumulation be directed to commence on the creation of the estate out of which the rents and profits are to arise, it

must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority.

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it shall commence within the time in this chapter permitted for the vesting of future estates, and during the minority of the persons for whose benefit it is directed, and shall terminate at the expiration of such minority.

Other directions when void in part; when wholly void.

Sec. 38. If in either of the cases mentioned in the last preceding section, the direction for such accumulation shall be for a longer time than during the minority of the persons intended to be benefited thereby, it shall be void as to the time beyond such minority, and all directions for the accumulation of the rents and profits of real estate, except such as are herein allowed, shall be void.

Application of profits, &c., to support of children.

Sec. 39. When such rents and profits are directed to be accumulated for the benefit of infants entitled to the expectant estate, and such infants shall be destitute of other sufficient means of support and education, the court of chancery, upon the application of their guardian, may direct a suitable sum out of such rents and profits to be applied to their maintenance and education.

Who entitled to profits of land in certain cases.

Sec. 40. When in consequence of a valid limitation of an expectant estate, there shall be a suspense of the power of alienation, or of the ownership, during the continuance of which the rents and profits shall be undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the person presumptively entitled to the next eventual estate.

Expectant estates, when created.

Sec. 41. The delivery of the grant, where an expectant estate is created by grant; and where it is created by devise, the death of the testator shall be deemed the time of the creation of the estate.

Certain expectant estates abolished.

Sec. 42. All expectant estates, except such as are enumerated and defined in this chapter, are abolished.

Estates in severalty, joint tenancy, and in common.

Sec. 43. Estates, in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy, and in common; the nature and properties of which, respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter.

Certain grants to create estates in common.

Sec. 44. All grants and devises of lands, made to two or more persons, except as provided in the following section, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy.

Application of last section.

Sec. 45. The preceding section shall not apply to mortgages, nor to devises or grants made in trust, or made to executors, or to husband and wife.

Nominal conditions annexed to grant.

Sec. 46. When any conditions annexed to a grant or conveyance of lands are merely nominal, and evince no intention of actual and substantial benefit to the party to whom, or in whose favor they are to be performed, they may be wholly disregarded, and a failure to perform the same shall in no case operate as a forfeiture of the lands conveyed subject thereto.

CHAPTER 57.

OF USES AND TRUSTS.

Certain uses and trusts abolished.

SECTION 1. Uses and trusts, except as authorized and modified in this chapter, are abolished; and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided in this title.

Executed uses confirmed.

SEC. 2. Every estate which is now held as an use, executed under the laws of this state, as they formerly existed, is confirmed as a legal estate.

Right to possession of lands creates legal ownership.

SEC. 3. Every person who, by virtue of any grant, assignment or devise, now is or hereafter shall be entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions as his beneficial interest.

Active trusts not affected by last section.

SEC. 4. The last preceding section shall not divest the estate of any trustees, in any existing trust, where the title of such trustees is not merely nominal, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust.

Trustees of estate for use of another take no interest.

SEC. 5. Every disposition of lands, whether by deed or devise, hereafter made, except as otherwise provided in this chapter, shall be directly to the person in whom the right to the possession and the profits shall be intended to be vested, and not to any other, to the use of, or in trust for, such person; and if made to one or more persons, in trust for, or to the use of another, no estate or interest, legal or equitable, shall vest in the trustee.

Preceding sections qualified.

SEC. 6. The preceding sections of this chapter shall not extend to trusts arising or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

Grant to one for money paid by another, no trust to result.

SEC. 7. When a grant for a valuable consideration shall be made to one person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall be made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

Except for benefit of creditors, &c.

SEC. 8. Every such conveyance shall be presumed fraudulent, as against the creditors of the person, paying the consideration; and when a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands.

Section seven qualified.

SEC. 9. The preceding seventh section shall not extend to cases where the alienee named in the conveyance shall have taken the same as an absolute conveyance in his own name, without the knowledge or consent of the person paying the consideration, or when such alienee, in violation of some trust, shall have purchased the lands so conveyed, with moneys belonging to another person.

Purchasers protected.

SEC. 10. No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser, for a valuable consideration, and without notice of such trust.

For what purposes express trusts may be created.

Sec. 11. Express trusts may be created for any or either of the following purposes:

1. To sell lands for the benefit of creditors.

2. To sell, mortgage or lease lands, for the benefit of legatees, or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the last preceding chapter.

4. To receive the rents and profits of lands, and to accumulate the same for the benefit of any married woman, or for either of the purposes and within the limits prescribed in the preceding chapter.

5. For the beneficial interest of any person or persons, when such trust is fully expressed and clearly defined upon the face of the instrument creating it, subject to the limitations as to time prescribed in this title.

Certain devises in trust, to be deemed powers.

Sec. 12. A devise of lands to executors or other trustees, to be sold or mortgaged, when such trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to their heirs or pass to the devisees of the testator, subject to the execution of the power.

Profits of land liable to creditors in certain cases.

Sec. 13. When a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, shall be liable in equity, to the claims of the creditors of such person, in the same manner as other personal property which cannot be reached by an execution at law.

Other express trusts to be powers in trust.

Sec. 14. When an express trust shall be created for any purpose not enumerated in the preceding sections of this chapter, no estate shall vest in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers contained in the next succeeding chapter.

Land to descend, &c., to the persons entitled.

Sec. 15. In every case where the trust shall be valid as a power, the land to which the trust relates, shall remain in, or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

Trustees of express trusts to have whole estate.

Sec. 16. Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created, shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.

Last section qualified.

Sec. 17. The preceding section shall not prevent any person creating a trust, from declaring to whom the lands to which the trust relates shall belong, in the event of the failure or termination of the trust, nor shall it prevent him from granting or devising such lands subject to the execution of the trust; and every such grantee shall have a legal estate in the lands, as against all persons except the trustees and those lawfully claiming under them.

Interest remaining in grantor of express trust.

Sec. 18. When an express trust is created, every estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to the person creating the trust, or his heirs, as a legal estate.

Sec. 19. No person beneficially interested in a trust for the receipt of the rents and profits of lands, can assign or in any manner dispose of such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross, is created, are assignable.

Effect of omitting trust in conveyance.

Sec. 20. When an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute as against the subsequent creditors of the trustees, not having notice of the trust, and as against purchasers from such trustees, without notice and for a valuable consideration.

Certain sales, &c, by trustees void.

Sec. 21. When the trust shall be expressed in the instrument creating the estate, every sale, conveyance, or other act of the trustees, in contravention of the trust, shall be absolutely void.

Other persons not to be affected by misconduct of trustees.

Sec. 22. No person who shall actually and in good faith make any payment to a trustee, which the trustee as such is authorised to receive, shall be responsible for the application thereof according to the trust; nor shall any right or title derived by such person from the trustee, in consideration of such payment, be impeached or called in question, in consequence of any misapplication of such payment by the trustee.

When estate of trustees to cease.

Sec. 23. When the purposes for which an express trust shall have been created, shall have ceased, the estate of the trustee shall also cease.

On death of surviving trustee, trust to be executed under direction of the court of chancery.

Sec. 24. Upon the death of the surviving trustee of an express trust, the trust shall not descend to his heirs, nor pass to his personal representatives; but the trust, if then unexecuted, shall vest in the court of chancery, with all the powers and duties of the original trustees, and shall be executed by some person appointed for that purpose, under the direction of the court.

When and how trustees may resign.

Sec. 25. Upon the petition of any trustee of an express trust, the court of chancery may accept his resignation, and discharge him from the trust, under such regulations as shall be established by the court for that purpose, and upon such terms as the rights and interests of the persons interested in the execution of the trust may require.

When and how trustees may be removed.

Sec. 26. Upon the petition or bill of any person interested in the execution of an express trust, and under such regulations as shall be established by the court for that purpose, the court of chancery may remove any trustee who shall have violated or threatened to violate his trust, or who shall be insolvent, or whose insolvency shall be apprehended, or who, for any other cause, shall be deemed an unsuitable person to execute the trust.

Places of trustees resigning or removed, how supplied.

Sec. 27. The court of chancery shall have full power to appoint a new trustee, in the place of a trustee resigned or removed; and when, in consequence of such resignation or removal, there shall be no acting trustee, the court, in its discretion, may appoint new trustees, or cause the trust to be executed by one of its officers, under its direction.

CHAPTER 58.

OF POWERS.

Powers, except as provided for in this chapter, abolished.

SECTION 1. Powers, except as authorized and provided for in this chapter, are abolished; and from the time this chapter shall be in force, the creation, construction and execution of powers, shall be governed by the provisions herein contained.

Definition of power.

SEC. 2. A power is an authority to do some act in relation to lands, or the creation of estates therein, or of charges thereon, which the owner granting or reserving such power, might himself lawfully perform.

Who incapable of granting a power.

SEC. 3. No person is capable in law of granting a power, who is not at the same time, capable of alienating some interest in the lands to which the power relates.

Division of powers.

SEC. 4. Powers, as authorized in this chapter, are general or special, and beneficial or in trust.

Definition of general powers.

SEC. 5. A power is general, when it authorizes the alienation in fee, by means of a conveyance, will or charge of the lands embraced in the power, to any alienee whatever.

Definition of special powers.

SEC. 6. A power is special,

1. When the person or class of persons, to whom the disposition of the lands under the power is to be made, are designated:

2. When the power authorizes the alienation, by means of a conveyance, will or charge, of a particular estate or interest less than a fee.

Beneficial powers.

SEC. 7. A general or special power is beneficial when no person other than the grantee has, by the terms of its creation, any interest in its execution.

Powers to married women.

SEC. 8. A general and beneficial power may be given to a married woman, to dispose during the marriage, and without the concurrence of her husband, of lands conveyed or devised to her in fee.

Estate of tenant for life, &c., when changed into a fee.

SEC. 9. When an absolute power of disposition, not accompanied by any trust, shall be given to the owner of a particular estate, for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers, but subject to any future estates limited thereon, in case the power should not be executed, or the lands should not be sold for the satisfaction of debts.

Certain powers create a fee, &c.

SEC. 10. When a like power of disposition shall be given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estates that may be limited thereon, but absolute, in respect to creditors and purchasers.

Ib.

SEC. 11. In all cases where such power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee.

Effect of power to devise the inheritance in certain cases.

SEC. 12. When a general and beneficial power to devise the inheritance, shall be given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning, and subject to the provisions of the three last preceding sections.

What powers to be deemed absolute.

Sec. 13. Every power of disposition shall be deemed absolute, by means of which the grantee is enabled, in his lifetime, to dispose of the entire fee for his own benefit.

Power to revoke.

Sec. 14. When the grantor in any conveyance, shall reserve to himself, for his own benefit, an absolute power of revocation, such grantor shall still be deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

Special and beneficial powers, who may take.

Sec. 15. A special and beneficial power may be granted,

1. To a married woman, to dispose, during the marriage, and without the consent of her husband, of any estate less than a fee, belonging to her, in the lands to which the power relates:

2. To a tenant for life of the lands embraced in the power, to make leases for not more than twenty-one years, and to commence in possession during his life.

Power to make leases by tenant for life.

Sec. 16. The power of a tenant for life to make leases, is not assignable as a separate interest, and will pass unless specially excepted, by any conveyance of such estate; and if specially excepted in any such conveyance, it is extinguished.

Release of such power.

Sec. 17. Such power may be released by the tenant to any person entitled to an expectant estate in the lands, and shall thereupon be extinguished.

Mortgage by party having power to lease, &c.

Sec. 18. A mortgage executed by a tenant for life having a power to make leases, or by a married women by virtue of any beneficial power, does not extinguish or suspend the power; but the power is bound by the mortgage, in the same manner as the lands embraced therein.

Effect of mortgage on power

Sec. 19. The effects of such a lien by mortgage on the power are,

1. That the mortgagee is entitled, in equity, to an execution of the power, so far as the satisfaction of his debt may require:

2. That any subsequent estate created by the owner, in execution of the power, becomes subject to the mortgage, in the same manner as if in terms embraced therein.

Future beneficial powers.

Sec. 20. No beneficial power, general or special, hereafter to be created, other than such as are enumerated and defined in the preceding sections of this chapter, shall be valid.

Beneficial powers liable to creditors.

Sec. 21. Every special and beneficial power is liable in equity to the claims of creditors, in the same manner as other interests that cannot be reached by an execution at law, and the execution of the power may be decreed for the benefit of the creditors entitled.

General powers, when in trust.

Sec. 22. A general power is in trust when any person or class of persons, other than the grantee of such power, is designated as entitled to the proceeds, or any portion of the proceeds or other benefits to arise from the alienation of the lands, according to the power.

Special powers, when in trust.

Sec. 23. A special power is in trust,

1. When the disposition which it authorizes, is limited to be made to any particular person, or class of persons, other than the grantee of such power:

2. When any person or class of persons, other than the grantee, is entitled to any benefit from the disposition or charge authorized by the power.

Trust powers, imperative.

SEC. 24. Every trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on the grantee, the performance of which may be compelled in equity for the benefit of the parties interested.

Effect of right of selection.

SEC. 25. A trust power does not cease to be imperative, when the grantee has the right to select any, and exclude others of the persons designated as the objects of the trust.

Construction of powers in certain cases.

SEC. 26. When a disposition under a power is directed to be made to, or among, or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion.

Ib.

SEC. 27. But when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons, in exclusion of the others.

When chancery to execute powers.

SEC. 28. If the trustee of a power, with the right of selection, shall die leaving the power unexecuted, its execution shall be decreed in the court of chancery for the benefit equally of all the persons designated as objects of the trust.

Ib.

SEC. 29. When a power in trust is created by will, and the testator has omitted to designate by whom the power is to be executed, its execution shall devolve on the court of chancery.

Application of certain sections of preceding chapter.

SEC. 30. The provisions contained in the next preceding chapter, from section twenty-two to section twenty-seven, both inclusive, in relation to express trusts and trustees, shall apply equally to powers in trust, and the grantees of such powers.

Execution of trust power when compelled by creditors, &c.

SEC. 31. The execution, in whole or in part, of any trust power, may be decreed in chancery for the benefit of the creditors or assignees of any person entitled as one of the objects of the trust to compel its execution, when the interest of the objects of such trust is assignable.

Beneficial powers, &c., to pass by general assignment.

SEC. 32. Every beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass to the assignees of the estate and effects of the person in whom such power or interest is vested, under any general assignment of the estate and effects of such person for the benefit of creditors, made pursuant to law.

Reservation of powers in conveyances.

SEC. 33. The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and every power so reserved, shall be subject to the provisions of this chapter, in the same manner as if granted to another.

How powers to be granted.

SEC. 34. A power may be granted,

1. By a suitable clause contained in the conveyance of some estate in the lands, to which the power relates:

2. By a devise contained in a last will and testament.

Recording powers, effect of, &c.

SEC. 35. Every power shall be a lien or charge upon the lands which it embraces, as against creditors and purchasers in good faith, and without notice, of or from any person having an estate in such lands, only from the time the instrument containing the power shall be recorded; but as against all other persons, the power shall be a lien from the time the instrument in which it is contained shall take effect.

When powers irrevocable.

SEC. 36. Every power, beneficial or in trust, is irrevocable, unless an authority to revoke it is reserved or granted in the instrument creating the power.

In whom power may be vested, &c.

SEC. 37. A power may be vested in any person capable in law of holding lands, but cannot be executed by any person not capable of alienating lands holden by such person, except in the single case mentioned in the next section.

Married women.

SEC. 38. A married woman may execute a power during her marriage, by grant or devise, as may be authorized by the power, without the concurrence of her husband, unless by the terms of the power, its execution by her during marriage, is expressly or impliedly prohibited; but no power vested in a married woman during her infancy, can be exercised by her until she attains her full age.

Survivors may execute power in case of death.

SEC. 39. When a power is vested in several persons, all must unite in its execution; but if, previous to such execution, one or more of such persons shall die, the power may be executed by the survivor or survivors.

How executed.

SEC. 40. No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power, if the person executing the power were the actual owner.

Instruments deemed conveyances as to certain particulars.

SEC. 41. Every instrument, except a will, made in execution of a power, whether it be a power of revocation or otherwise, shall be deemed a conveyance within the meaning and subject to the provisions of the next succeeding chapter.

Execution of power to dispose by devise.

SEC. 42. When a power of disposition is confined to a disposition by devise or will, the instrument must be a will duly executed according to the provisions of law relating to wills of real and personal estate.

Execution of power to dispose by grant.

SEC. 43. When a power is confined to a disposition by grant, it cannot be executed by will, although the disposition is not intended to take effect until after the death of the party in whom the power is vested.

How grant to be acknowledged by married women.

SEC. 44. If a married woman execute a power by grant, such grant shall be acknowledged by her on a private examination in the manner prescribed in the next succeeding chapter, in relation to conveyances by married women, and shall not be valid unless so acknowledged.

Power not void, though execution of instrument insufficient, &c.

SEC. 45. When the grantor of a power shall have directed or authorized it to be executed by an instrument not sufficient to pass the estate, such power shall not be void, but its execution shall be governed by the rules prescribed in this chapter.

Directions of grantor.

SEC. 46. When the grantor shall have directed any formalities to be used in the execution of a power, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formalities shall not be necessary to a valid execution of the power.

Nominal conditions.

SEC. 47. When the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor they are to be performed, they may be wholly disregarded in the execution of the power.

When directions of grantor to be observed.

Sec. 48. With the exceptions contained in the preceding sections, the intentions of the grantor of a power, as to the mode, time and conditions of its execution shall be observed, subject to the power of a court of chancery to supply a defective execution, in the cases hereinafter provided.

Consent of third person to execution of power.

Sec. 49. When the consent of a third person to the execution of the power is requisite, such consent shall be expressed in the instrument by which the power is executed, or shall be certified in writing thereon; and in the first case, the instrument of execution, in the second, the certificate, shall be signed by the party whose consent is required; and to entitle the instrument to be recorded, such signature must be duly proved or acknowledged, in the same manner as if subscribed to a conveyance of lands.

Certain dispositions not void.

Sec. 50. No disposition, by virtue of a power, shall be void in law or equity, on the ground that it is more extensive than was authorized by the power; but every estate or interest so created, so far as embraced by the terms of the power, shall be good and valid.

Omission to recite power.

Sec. 51. Every instrument executed by the grantee of a power, conveying an estate or creating a charge which such grantee is authorized by the power to convey or create, but which he would have no right to convey or create, unless by virtue of his power, shall be deemed a valid execution of the power, although such power be not recited or referred to therein.

Fraud.

Sec. 52. Instruments in execution of a power are affected by fraud, both in law and equity, in the same manner as conveyances by owners or trustees.

Power to devise, when to pass by will.

Sec. 53. Lands embraced in a power to devise, shall pass by a will, purporting to convey all the real property of the testator, unless the intent that the will shall not operate as an execution of the power, shall appear expressly, or by necessary implication.

Certain estates to be advancements.

Sec. 54. Every estate or interest given by a parent to a descendant by virtue of a beneficial power, or of a power in trust with a right of selection, shall be deemed an advancement to such descendant, to the same extent, and under the same circumstances that a gift of real or personal estate would be deemed an advancement.

Computation of time of suspension.

Sec. 55. The period during which the absolute right of alienation may be suspended by any instrument in execution of a power, shall be computed from the time of the creation of the power, and not from the date of such instrument.

Who may not take under powers.

Sec. 56. No estate or interest can be given or limited to any person, by an instrument in execution of a power, which such person would not have been capable of taking, under the instrument by which the power was granted.

Married women, their authority, &c.

Sec. 57. When a married woman, entitled to an estate in fee, shall be authorized by a power to dispose of such estate during her marriage, she may, by virtue of such power, create any estate which she might create if unmarried.

Defective executions may be decreed in equity.

Sec. 58. When the execution of a power in trust shall be defective, in whole or in part, under the provisions of this chapter, its proper execution may be decreed in equity, in favor of the persons designated as the objects of the trust.

Ib.

SEC. 59. Purchasers for a valuable consideration, claiming under a defective execution of any power, shall be entitled to the same relief in equity, as similar purchasers claiming under a defective conveyance from an actual owner.

Powers to sell contained in mortgages.

SEC. 60. When a power to sell lands shall be given to the grantee, in any mortgage or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, and shall vest in, and may be executed by any person, who by assignment or otherwise shall become entitled to the money so secured to be paid.

Application of this chapter.

SEC. 61. The provisions of this chapter shall not extend to a simple power of attorney, to convey lands in the name, and for the benefit of the owner.

Terms "grantor of a power," and 'grantee of a power," defined.

SEC. 62. The term "grantor of a power," is used in this chapter as designating the person by whom a power is created, whether by grant or devise; and the term "grantee of a power," is used as designating the person in whom a power is vested, whether by grant, devise, or reservation.

CHAPTER 59.

OF ALIENATION BY DEED, OF THE PROOF AND RECORDING OF CONVEYANCES, AND THE CANCELING OF MORTGAGES.

Conveyance of land may be made by deed.

SECTION 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as directed in this chapter, without any other act or ceremony whatever.

Conveyance by husband and wife.

SEC. 2. A husband and wife may, by their joint deed, convey the real estate of the wife, in like manner as she might do by her separate deed, if she were unmarried; but the wife shall not be bound by any covenant contained in such joint deed.

Deed of quit claim, &c., effect of conveyance by.

SEC. 3. A deed of quit claim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale.

Conveyance by tenant for life or years, &c.

SEC. 4. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

No covenant to be implied in conveyances.

SEC. 5. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

Same of mortgages, &c.

SEC. 6. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured; and where there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment, shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

Conveyance of land adversely possessed.

Sec. 7. No grant or conveyance of lands, or interest therein, shall be void for the reason that at the time of the execution thereof such lands shall be in the actual possession of another claiming adversely.

Execution and acknowledgment of deed.

Sec. 8. Deeds executed within this state, of lands, or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such, and the persons executing such deeds may acknowledge the execution thereof before any judge or commissioner of a court of record, or before any notary public, or justice of the peace within the state, and the officer taking such acknowledgment, shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same under his hand.

Deeds, how executed and acknowledged in other states.

Sec. 9. If any such deed shall be executed in any other state, territory or district of the United States, such deed may be executed according to the laws of such state, territory or district, and the execution thereof may be acknowledged before any judge of a court of record, notary public, justice of the peace, master in chancery or other officer authorized by the laws of such state, territory or district to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of this state for such purpose.

How acknowledgment authenticated.

Sec. 10. In the cases provided for in the last preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of this state for that purpose, such deed shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be, that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such state, territory or district.

Deeds executed in foreign country.

Sec. 11. If such deed be executed in any foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge des affaires, commissioner or consul of the United States appointed to reside therein; which acknowledgment shall be certified thereon by the officer taking the same under his hand, and if taken before a notary public, his seal of office shall be affixed to such certificate.

Acknowledgment by married women residing in this state.

Sec. 12. When any married woman residing in this state, shall join with her husband in a deed of conveyance of real estate, situate within this state, the acknowledgment of the wife shall be taken separately and apart from her husband; and she shall acknowledge that she executed such deed freely, and without any fear or compulsion from any one.

Conveyance by married women residing out of this state.

SEC. 13. When any married woman not residing in this state, shall join with her husband in any conveyance of real estate situated within this state, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her, may be the same as if she were sole.

Proof of execution by subscribing witness, when and how to be made.

SEC. 14. When any grantor shall die, or depart from, or reside out of this state, not having acknowledged his deed, the due execution thereof may be proved by any competent subscribing witness thereto, before any court of record in this state.

In case of death of subscribing witnesses.

SEC. 15. If all the subscribing witnesses to such deed shall also be dead, or out of this state, the same may be proved before any court of record in this state, by proving the hand writing of the grantor, and of any subscribing witness thereto.

Proceedings on refusal of grantor residing in this state to acknowledge deed.

SEC. 16. If any grantor residing in this state, shall refuse to acknowledge his deed, the grantee or any person claiming under him, may apply to any justice of the peace in the county where the land lies, or where the grantor or any subscribing witness to the deed resides, who shall thereupon issue a summons to the grantor to appear at a certain time and place before the said justice, to hear the testimony of the subscribing witnesses to the deed; and the said summons, with a copy of the deed annexed, shall be served at least seven days before the time therein assigned for proving the deed.

Ib.

SEC. 17. At the time mentioned in such summons, or at any time to which the hearing may be adjourned, the due execution of the deed may be proved by the testimony of one or more of the subscribing witnesses; and if proved to the satisfaction of the justice, he shall certify the same thereon, and in such certificate he shall note the presence or absence of the grantor, as the fact may be.

When execution may be proved before court of record, in case of death of witnesses, &c.

SEC. 18. If any grantor residing in this state, shall refuse to acknowledge his deed, and the subscribing witnesses thereto shall all be dead or out of the state, it may be proved before any court of record in this state, by proving the hand writing of the grantor, or of any subscribing witness; the said court first summoning the grantor for the purpose, in the manner before provided in this chapter.

Subpœnas for witnesses.

SEC. 19. The court or justice before whom any deed may be presented to be proved, as provided in the preceding sections, may issue subpœnas to the subscribing witnesses or others, as the case may require, to appear and testify touching the execution of such deed; which subpœnas may be served in any part of this state.

Punishment for refusing to appear or to answer, &c.

SEC. 20. Every person, who, being served with such subpœna, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer on oath touching the matters aforesaid, shall be liable to the injured party in the sum of one hundred dollars damages, and for such further damages as such party may sustain thereby; and may also be committed to prison as for a contempt by the court or justice who issued such subpœna, there to remain until he shall submit to answer upon oath as aforesaid.

Filing copy of deed with register, effect of, &c.

SEC. 21. Any person interested in a deed that is not acknowledged, may, at any time before or during such application to a court of record, or such proceedings before a justice, file in the office of the register of deeds of the county where the lands are situated, a copy of the deed compared with the original by the register, which shall, for the space of thirty days thereafter, in case of proceedings before a justice, and in case of proceedings before a court of record, for the space of ten days after the first day of the next term of such court, have the same effect as the recording of the deed, if such deed shall, within that time be duly proved and recorded.

When effect of filing to continue.

Sec. 22. If, at the expiration of the time mentioned in the preceding section for that purpose, such proceedings for proving the execution of the deed shall be pending before a justice of the peace, the effect of filing such copy shall continue until the expiration of seven days after the termination of the proceedings, if such deed shall within that time be duly proved and recorded.

Certificate to entitle deed to be recorded.

Sec. 23. A certificate of the acknowledgment of any deed, or of the proof of the execution thereof, before a court of record, or justice of the peace, signed by the clerk of such court, or by the justice before whom the same was taken, as provided in this chapter, and, in the cases where the same is necessary, the certificate required by the tenth section of this chapter, shall entitle such deed, with the certificate or certificates aforesaid, to be recorded in the office of the register of deeds of the county where the lands lie.

Conveyance not recorded, void as against subsequent purchasers in good faith, &c.

Sec. 24. Every conveyance of real estate within this state, hereafter made, which shall not be recorded as provided by law, shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded.

Recording deeds of pews and slips in churches.

Sec. 25. Deeds of pews or slips in any church, may be recorded by the clerk of the town, in which such church is situated, or by the clerk of the society or proprietors, if incorporated or legally organized; and such clerks shall receive the same fees as the register of deeds is entitled to for similar services.

Effect of conveyances and other instruments and transcripts thereof as evidence.

Sec. 26. All conveyances and other instruments authorized by law to be recorded, and which shall be acknowledged or proved as provided in this chapter, and if the same shall have been recorded, the record, or a transcript of the record, certified by the register in whose office the same may have been recorded, may be read in evidence in any court within this state, without further proof thereof; but the effect of such evidence may be rebutted by other competent testimony.

When deed not defeated by defeasance.

Sec. 27. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the registry of deeds of the county where the lands lie.

Recording assignment of mortgage not deemed notice to mortgagor.

Sec. 28. The recording of an assignment of a mortgage shall not, in itself, be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

Definition of term "purchaser," as used in this chapter.

Sec. 29. The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any estate or interest in real estate, shall be conveyed for a valuable consideration; and also every assignee of a mortgage, or lease, or other conditional estate.

Definition of term "conveyance," as used in this chapter.

Sec. 30. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, by which any estate or interest in real estate is created, aliened, mortgaged or assigned, or by which the title to any real estate may be affected in law or equity, except wills, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands.

Construction of preceding section; letters of attorney, &c.

Sec. 31. The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed in this chapter, may be recorded in the registry of deeds of any county in which the lands to which such power or contract relates, may be situated; and when so acknowledged or proved, and the record thereof when recorded, or a transcript of such record duly certified, may be read in evidence, in the same manner, and with the like effect, as a conveyance recorded in such county.

How letters of attorney revoked.

Sec. 32. No letter of attorney or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded.

Transcribing records on division &c, of county.

Sec. 33. When a new county shall be organized, in whole or in part, from an organized county, or from territory attached to such organized county, for judicial purposes, all the records of deeds or other instruments relating to real estate in such new county, may be transcribed into the proper books by the register of deeds of such new county; which records so transcribed, shall have the same effect in all respects as original records, and the register shall be paid for transcribing the same, such sum as the board of supervisors of his county may deem just and reasonable.

Scroll or device used as a seal.

Sec. 34. A scroll or device used as a seal upon any deed of conveyance or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon, but this section shall not be construed to apply to such official seals as are or may be provided for by law.

Effect of deeds, &c, acknowledged according to law in force.

Sec 35. All conveyances of real estate, heretofore made and acknowledged, or proved in accordance with the laws of this state, in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner, and with the like effect, as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

How mortgage may be discharged.

Sec. 36. Any mortgage that has been, or may hereafter be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative, or assignee, acknowledging the satisfaction of the mortgage, in the presence of the register of deeds or his deputy, who shall subscribe the same as a witness; and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Ib.

Sec. 37. Any mortgage shall also be discharged upon the record thereof, by the register of deeds in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved, and certified, as hereinbefore prescribed to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Certificate and acknowledgment to be recorded.

Sec. 38. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book and page containing such record, in the minute of the discharge of such mortgage made by the register upon the record thereof.

Liability of mortgagee, &c., for neglect to discharge mortgage.

Sec. 39. If any mortgagee, or his personal representative or assignee, as the case may be, after a full performance of the condition of the mortgage, whether before or after a breach thereof, shall for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same as provided in this chapter, or to execute and acknowledge a certificate of discharge, or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in an action on the case.

CHAPTER 60.

OF RECORDING CONTRACTS RELATING TO LAND.

When bonds and contracts concerning lands may be recorded.

Section 1. All bonds, contracts, or agreements concerning any interest in lands in this state, made in writing under seal, attested by one or more witnesses, and acknowledged before some person authorized by law to take acknowledgments of deeds, may be recorded in the office of registers of deeds of the county where the lands lie.

Duty of registers of deeds.

Sec. 2. It shall be the duty of the register of deeds in each county within this state, to receive and record at length all such bonds, contracts, or agreements, as shall be left with him for that purpose.

Effect of recorded bonds and contracts.

Sec. 3. Each and every bond, contract, or agreement, made and recorded according to the provisions of the first section of this chapter, shall be notice to, and take precedence of any subsequent purchaser, or purchasers, and shall operate as a lien upon the lands therein described, according to its import and meaning.

Registers' fees for recording same.

SEC. 4. The said register shall receive the same compensation for recording all papers contemplated by this chapter, as is now allowed by law for recording deeds and mortgages.

CHAPTER 61.

OF THE APPOINTMENT OF COMMISSIONERS TO TAKE THE ACKNOWLEDGMENT OF DEEDS, &C., IN OTHER STATES.

Governor may appoint commissioners to take acknowledgment of deeds, &c.

SECTION 1. The governor shall have power to appoint one or more commissioners in any other of the United States, or of the territories belonging to the United States, who shall continue in office during the pleasure of the governor, and shall have authority to take the acknowledgment and proofs of the execution of any deed or other conveyance or lease of any lands lying in this state, and of any contract, letter of attorney, or any other writing, under seal or not, to be used or recorded in this state.

Effect of acknowledgments taken by commissioners

SEC. 2. Such acknowledgment or proof, so taken according to the laws of this state, and certified to by any such commissioner, under his seal of office, annexed to or indorsed on such instrument, shall have the same power and effect as if the same had been made before any officer authorized to perform such acts in this state.

Power of commissioners to take oaths and depositions.

SEC. 3. Every commissioner, appointed as before mentioned, shall have power to administer an oath which may be lawfully required in this state, to any person willing to take it, and to take and duly certify all depositions to be used in any of the courts of this state in conformity to the laws thereof, either on interrogatories proposed under a commission from a court of this state, or by consent of parties, or on legal notice given to the opposite party, and all such acts shall be as valid as if done and certified according to law by a proper officer of this state.

Commissioners to take official oath, &c.

SEC. 4. Every such commissioner, before performing any duty, or exercising any power by virtue of his appointment, shall take and subscribe an oath or affirmation before a judge or a clerk of one of the courts of record of the state in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of Wisconsin, which oath, with a description or impression of his seal of office, shall be filed in the office of the secretary of this state.

CHAPTER 62.

OF ESTATES IN DOWER, BY THE CURTESY AND GENERAL PROVISIONS CONCERNING REAL ESTATE.

Estates in Dower.

Widow entitled to dower.

SECTION 1. The widow of every deceased person, shall be entitled to dower, or the use during her natural life, of one-third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.

Dower in case of exchange of land by husband.

SEC. 2. If a husband seized of an estate of inheritance in lands, exchange them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

Dower in mortgaged land.

SEC. 3. When a person seized of an estate of inheritance in lands, shall have executed a mortgage of such estate before marriage, his widow shall be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

Same in land mortgaged to secure purchase money.

SEC. 4. When a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons.

When widow entitled to dower after sale on mortgage.

SEC. 5. Where, in either of the cases mentioned in the two last preceding sections, or in case of a mortgage in which she shall have joined with her husband, the mortgagee, or those claiming under him shall, after the death of the husband, cause the mortgaged premises to be sold by virtue of such mortgage, and any surplus shall remain after payment of the moneys due thereon, and the costs and charges of the sale, such widow shall be entitled to the interest or income of one-third part of such surplus, for her life, as dower.

When widow entitled to dower of residue after deducting amount paid on mortgage.

SEC. 6. If, in either of the cases above specified, the heir or other person claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out to her, for her dower in the mortgaged lands, the value of one-third of the residue after such deduction.

Dower in lands aliened by husband, how estimated.

SEC. 7. When a widow shall be entitled to dower out of any lands which shall have been aliened by the husband in his life time, and such lands shall have been enhanced in value after the alienation, such lands shall be estimated, in setting out the widow's dower, according to their value at the time when they were so aliened.

When dower may be assigned by probate court.

Sec. 8. When a widow is entitled to dower in lands of which her husband died seized, and her right to dower is not disputed by the heirs or devisees, or any person claiming under them, or either of them, it may be assigned to her, in whatever counties the lands may lie, by the judge of probate for the county in which the estate of the husband is settled upon application of the widow or any other person interested in the lands; notice of which application shall be given to such heirs, devisees or other persons, in such manner as the judge of probate shall direct.

Warrant for assignment of dower.

Sec. 9. For the purpose of assigning such dower, the judge of probate shall issue his warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

Commissioners to be sworn &c; recording assignment—costs.

Sec. 10. The commissioners shall be sworn before a judge or justice of the peace, to the faithful discharge of their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges and expenses, in writing, to the probate court; and the same being accepted and recorded, and an attested copy thereof recorded in the office of the register of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation be set aside or reversed on appeal; and one-half of the cost of such proceedings shall be paid by the widow and the other half by the adverse party.

When estates consists of mill, &c, how dower assigned.

Sec. 11. When the estate out of which dower is to be assigned consists of a mill, or other tenement which cannot be divided without damage to the whole, and in all cases where the estate cannot be divided by metes and bounds, the dower may be assigned of the rents, issues and profits thereof, to be had and received by the widow as a tenant in common with the other owners of the estate.

When widow may occupy with heirs.

Sec. 12. When a widow is entitled to dower in the lands of which her husband died seized, she may continue to occupy the same with the children or other heirs of the deceased, or may receive one-third part of the rents, issues and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

How dower may be barred.

Sec. 13. A married moman residing within this state, may bar her right of dower in any estate conveyed by her husband, or by his guardian, if he be a minor, by joining in the deed of conveyance, and acknowledging the same as prescribed in the preceding chapter, or by joining with her husband in a subsequent deed, acknowledged in like manner.

Ib.

Sec. 14. A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her with her assent before the marriage, provided such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband.

Ib.

Sec. 15. Such assent shall be expressed, if the woman be of full age, by her becoming a party to the conveyance by which it is settled, and if she be under age, by her joining with her father or guardian in such conveyance.

Ib.

Sec. 16. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

Election in case of jointure.

Sec. 17. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband, whether she will take such jointure or pecuniary provision, or be endowed of the lands of her husband; but she shall not be entitled to both.

Election in case of provision by will.

Sec. 18. If any lands be devised to a woman, or other provision be made for her in the will of her husband, she shall make her election whether she will take the lands so devised, or the provision so made, or whether she will be endowed of the lands of her husband; but she shall not be entitled to both, unless it plainly appears by the will to have been so intended by the testator.

When widow deemed to have elected, to take jointure, &c.

Sec. 19. When a widow shall be entitled to an election under either of the two last preceding sections, she shall be deemed to have elected to take such jointure, devise or other provision, unless within one year after the death of her husband, she shall commence proceedings for the assignment or recovery of her dower.

When widow to be endowed anew.

Sec. 20. If a woman is lawfully evicted of lands assigned to her as dower, or settled upon her as jointure, or is deprived of the provision made for her by will or otherwise, in lieu of dower, she may be endowed anew, in like manner as if such assignment, jointure or other provision had not been made.

Woman being an alien, or residing out of state, to have dower.

Sec. 21. A woman being an alien, shall not on that account be barred of her dower, and any woman residing out of the state, shall be entitled to dower of the lands of her deceased husband, lying in this state, of which her husband died seized, and the same may be assigned to her, or recovered by her, in like manner as if she and her deceased husband had been residents within the state at the time of his death.

Woman not to commit waste; to keep houses, &c, in repair.

Sec. 22. No woman who shall be endowed of any lands, shall commit or suffer any waste on the same; but every woman so endowed shall maintain the houses and tenements, with the fences and appurtenances in good repair, and shall be liable to the person having the next immediate estate of inheritance therein for all damages occasioned by any waste committed or suffered by her.

How long widow may remain in dwelling house, and have sustenance.

Sec. 23. A widow may remain in the dwelling house of her husband one year after his death, without being chargeable with rent therefore, and shall have her reasonable sustenance out of his estate for one year.

When to recover damages.

Sec. 24. Whenever, in any action brought for the purpose, a widow shall recover her dower in lands in which her husband shall have died seized, she shall be entitled also to recover damages for the withholding of such dower.

Measure of damages, &c.

Sec. 25. Such damages shall be one-third part of the annual value of the mesne profits of the lands in which she shall so recover her dower, to be estimated in a suit against the heirs of her husband, from the time of his death; and in suits against other persons from the time of her demanding her dower of such persons.

Not on improvements. SEC. 26. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband, by his heirs, or by any other person claiming title to such lands.

Damages against heir alienating land, &c. SEC. 27. When a widow shall recover her dower in any lands alienated by the heir of her husband, she shall be entitled to recover of such heir, in an action on the case, her damages for withholding such dower, from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she shall be entitled to recover from such heir, shall be deducted from the amount she would othwise be entitled to recover from such grantee, and any amount recovered as damages, from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

Claim when barred by assignment of dower. SEC. 28. When the widow shall have accepted an assignment of dower, in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned to her as aforesaid.

Collusive recovery not to prejudice infant heirs, &c. SEC. 29. When a widow not having right to dower, shall, during the infancy of the heirs of the husband, or any of them, or of any person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heir or other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

Estates by the Curtesy.

When husband to hold as tenant by the curtesy. SEC. 30. When any man and his wife shall be seized in her right of any estate of inheritance in lands, the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by the curtesy: Provided, that if the wife, at her death, shall leave issue by any former husband, to whom the estate might descend, such issue shall take the same, discharged from the right of the surviving husband to hold the same as tenant by the curtesy.

General Provisions.

Liability of person in possession of land out of which rent is reserved. SEC. 31. Every person in possession of land, out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

How rent recovered. SEC. 32. Such rent may be recovered in an action of debt or assumpsit, and the deed of demise, or other instrument in writing if there be any showing the provisions of the lease, may be used in evidence by either party to prove the amount due from the defendant.

Construction of preceding sections. SEC. 33. Nothing contained in the preceding sections shall deprive landlords of any legal remedy for the recovery of their rents, whether secured to them by their leases, or provided by law.

Determination of estates at will, and by sufferance.

SEC. 34. All estates at will or by sufferance, may be determined by either party, by three months' notice given to the other party; and when the rent reserved in a lease at will is payable at periods of less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Aliens may hold, convey and devise land, &c.

SEC. 35. Any alien may acquire and hold lands, or any right thereto or interest therein, by purchase, devise or descent, and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend, in like manner, and with like effect, as if such alien were a native citizen of this state, or of the United States.

Title to lands heretofore conveyed, not to be questioned on account of alienage.

SEC. 36. The title to any lands heretofore conveyed shall not be questioned, nor in any manner affected, by reason of the alienage of any person from or through whom such title may have been derived.

Remainder man &c., may sue for injuries to inheritance.

SEC. 37. A person seized of an estate in remainder or reversion, may maintain an action of trespass on the case, for any injury done to the inheritance, notwithstanding any intervening estate for life or years.

When joint tenant may maintain action against cotenant.

SEC. 38. One joint tenant or tenant in common, and his executors or administrators, may maintain an action for money had and received, against his co-tenant, for receiving more than his just proportion of the rents or profits of the estate owned by them as joint tenants or tenants in common.

TITLE XVI.

CHAPTER 63.

OF TITLE TO REAL PROPERTY BY DESCENT.

How land, &c., to descend.

SECTION 1. When any person shall die seized of any lands, tenements or hereditaments, or of any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, in manner following:

1. In equal shares to his children, and to the lawful issue of any deceased child by right of representation; and if there be no child of the intestate living at his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise they shall take according to the right of representation:

2. If he shall leave no issue, his estate shall descend to his widow during her natural lifetime, and after her decease, to his father; and if he shall leave no issue or widow, his estate shall descend to his father:

3. If he shall leave no issue, nor widow, nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation: Provided, that if he shall leave a mother also, she shall take an equal share with his brothers and sisters:

4. If the intestate shall leave no issue, nor widow nor father, and no brother nor sister, living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters:

5. If the intestate shall leave no issue, nor widow, and no father, mother, brother nor sister, his estate shall descend to his next of kin in equal degree; excepting, that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote: Provided, however,

6. If any person shall die leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation:

7. If at the death of such child who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to said child by inheritance from his said parent, shall descend to all the issue of other children of the same parent, and if all the said issue are in the same degree of kindred to said child, they shall share the said estate equally; otherwise they shall take according to the right of representation:

8. If the intestate shall leave a widow, and no kindred, his estate shall descend to such widow:

9. If the intestate shall leave no widow nor kindred, his estate shall escheat to the people of this state, for the use of the primary school fund.

Illegitimate children when to inherit.

SEC. 2. Every illegitimate child shall be considered as an heir of the person who shall, in writing signed in the presence of a competent witness, have acknowledged himself to be the father of such child; and shall, in all cases, be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral; unless, before his death, his parents shall have intermarried and had other children, and his father, after such marriage, shall have acknowledged him as aforesaid, or adopted him into his family; in which case, such child and all the legitimate children shall be considered as brothers and sisters, and, on the death of either of them intestate and without issue, the others shall inherit his estate, and he theirs, as herein before provided, in like manner as if all the children had been legitimate; saving to the father and mother, respectively, their rights in the estates of all the said children, as provided herein before, in like manner as if all had been legitimate.

Estate of illegitimate child, to whom to descend.

SEC. 3. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, or, in case of her decease, to her heirs at law.

Degrees of kindred, how computed; half blood to inherit.

SEC. 4. The degrees of kindred shall be computed according to the rules of the civil law; and kindred of the half blood, shall inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case, all those who are not of the blood of such ancestor, shall be excluded from such inheritance.

Advancement, how to be considered.

SEC. 5. Any estate, real or personal, that may have been given by the intestate in his life time, as an advancement to any child, or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child, or other descendant, towards his share of the estate of the intestate.

When advancement to exclude heir from further portion.

SEC. 6. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion, in the division and distribution of the estate, but he shall not be required to refund any part of such advancement, and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

Advancement, how estimated.

SEC. 7. If such advancement be made in real estate, the value thereof shall, for the purposes mentioned in the preceding section, be considered a part of the real estate to be divided; and if it be in personal estate, it shall be considered as a part of the personal estate; and if in either case it shall exceed the share of real or of personal estate, respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him.

When gifts, &c., to be deemed advancement.

SEC. 8. All gifts and grants shall be deemed to have been made in advancement, if they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

Value of advancement, how estimated.

SEC. 9. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving it, it shall be considered as of that value, in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given, as nearly as the same can be ascertained.

In case of death of heir, advance to be allowed by the representatives.

SEC. 10. If any child, or other lineal descendant so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration, in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heirs so advanced, in like manner as if the advancement had been made directly to them.

Construction of this chapter.

SEC. 11. Nothing in this chapter shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower, nor shall the same affect any limitation of an estate by deed or will.

Inheritance "by right of representation."

SEC. 12. Inheritance or succession, "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parent would have taken if living. Posthumous children are considered as living at the death of their parents.

Posthumous children.

TITLE XVII.

Of Title to Real Estate by Special Provisions of Law.

Chapter 64. Of the sale of lands of minors and other persons under guardianship, and securing the proceeds for their use.
65. Of the sale of lands for the payment of debts, by executors, administrators and guardians.

CHAPTER 64.

OF THE SALE OF LANDS OF MINORS AND OTHER PERSONS UNDER GUARDIANSHIP, AND SECURING THE PROCEEDS FOR THEIR USE.

When guardian may sell real estate of ward.

Section 1. When the income of the estate of any person under guardianship, whether as a minor, insane person or spendthrift, shall not be sufficient to maintain the ward and his family, or to educate the ward, when a minor, or the children of such insane person, or spendthrift, his guardian may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein as provided in this chapter.

When guardian may sell and put out proceeds at interest.

Sec. 2. When it shall appear satisfactorily to the court, upon the petition of any such guardian, that it would be for the benefit of his ward that his real estate, or any part thereof, should be sold, and the proceeds thereof put out on interest, or invested in some productive stock, his guardian may sell the same for that purpose, upon obtaining a license therefor, and proceeding therein as hereinafter provided.

Application of proceeds of sale, &c.

Sec. 3. If the estate is sold for the purpose mentioned in the first section of this chapter, the guardian shall apply the proceeds of the sale to such purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, or for the education of the ward when a minor, or the children of such insane person or spendthrift, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Investment of proceeds of sale.

Sec. 4. If the estate is sold for the purpose of putting out or investing the proceeds, as provided in the second section of this chapter, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.

Residue on final settlement considered as real estate.

SEC. 5. In every case of the sale of real estate, as provided in this chapter, the residue of the proceeds, if any, remaining upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions as the real estate would have been, if it had not been sold.

Petition for license

SEC. 6. In order to obtain a license for such sale, the guardian shall present to the probate court of the county in which he was appointed guardian, a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale; which petition shall be verified by the oath of the petitioner.

Order to show cause.

SEC. 7. If it shall appear to the court from such petition, that it is necessary, or would be beneficial to the ward, that such real estate, or some part of it, should be sold, the court shall thereupon make an order, directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place therein to be specified, not less than four nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

Service, &c., of order.

SEC. 8. A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or shall be published at least three successive weeks in such newspaper circulating in the county, as the court shall specify in such order.

When certificate of supervisors of town necessary.

SEC. 9. No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the supervisors of the town in which the ward is an inhabitant, shall certify in writing their approbation of the proposed sale.

Hearing of petition

SEC. 10. The judge of probate, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service or publication of the order, and upon filing the certificate of approbation of the supervisors of the town, when necessary, shall hear and examine the proofs and allegations of the petitioner, and of the next of kin, and all other persons interested in the estate, who shall think proper to oppose the application.

Examination of guardian, &c.

SEC. 11. On such hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the judge of probate, in the same manner, and with the like effect as in other cases.

When license to be granted, and what to specify.

SEC. 12. If, after a full examination, it shall appear to the court, either that it is necessary, or that it would be for the benefit of the ward, that the real estate, or any part of it should be sold, such court may grant a license therefor, specifying therein whether the sale is to be made for the maintenance of the ward and his family, or for the education of the ward or his children, or in order that the proceeds may be put out or invested as aforesaid.

Bond to be given by guardian.

SEC. 13. Every guardian licensed to sell real estate as aforesaid, shall, before the sale, give bond to the judge of probate, with sufficient surety or sureties to be approved by such judge, with condition to sell the same in the manner prescribed by law for sales of real estate by executors and administrators, and to account for and dispose of the proceeds of the sale, in the manner provided by law.

Guardian to take oath before fixing time and place of sale.

SEC. 14. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath in substance like that required in the succeeding chapter, to be taken by an executor, administrator or guardian, when licensed to sell real estate pursuant to the provisions of that chapter.

Notice of sale, &c.

SEC. 15. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as is prescribed in the case of a sale by a guardian in the succeeding chapter, and the evidence of the giving of such notice may be perpetuated in like manner, and with the same effect, as is provided in like cases in that chapter.

License not in force more than one year.

SEC. 16. No license granted in pursuance of this chapter, shall be in force more than one year after granting the same.

When foreign guardian may file copy of his appointment.

SEC. 17. When any minor, insane person or spendthrift, residing without this state, shall be put under guardianship in the state or country in which he resides, and shall have no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment in the probate court, in any county in which there may be any real estate of the ward.

Foreign guardian may be licensed to sell.

SEC. 18. After filing such authenticated copy of his appointment, such foreign guardian may be licensed by the probate court of the same county, to sell the real estate of the ward in this state, in the same manner and upon the same terms and conditions as are prescribed in this chapter in the case of a guardian appointed in this state, excepting in the particulars hereinafter mentioned.

Manner of conducting sale, &c., by foreign guardian.

SEC. 19. Every foreign guardian so licensed to sell real estate, shall take and subscribe the oath required in the like case of guardians appointed in this state, and shall give notice of the time and place of sale, and conduct the same in the manner prescribed for guardians appointed here, and may perpetuate the evidence of notice in the same manner.

Disposition of residue on final settlement by foreign guardian, &c.

SEC. 20. Upon every such sale by a foreign guardian, the proceeds of the sale, or as much thereof as may remain upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions, as the real estate would have been according to the laws of this state, if it had not been sold; and such foreign guardian shall in every case, before making the sale, give bond with satisfactory surety or sureties, to the judge of probate, with condition to account for and dispose of the same accordingly.

When the court may award costs to prevailing party.

SEC. 21. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, and it shall appear to the court, that either the petition or the objection thereto is unreasonable, said court may, in its discretion, award costs to the party prevailing, and enforce the payment thereof.

Limitation of suits by ward, &c., to recover estate sold by guardian.

Sec. 22. No action for the recovery of any estate sold by a guardian under the provisions of this chapter, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship; excepting only that persons out of the state, and minors, and others under legal disability to sue, at the time when the cause of action shall accrue, may commence their action at any time within five years next after the removal of the disability, or after their return to the state.

Sale not avoided on account of certain irregularities.

Sec. 23. In case of an action relating to any estate sold by a guardian, under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings, provided it shall appear:

1. That the guardian was licensed to make the sale by a probate court of competent jurisdiction:

2. That he gave a bond which was approved by the judge of probate, in case any bond was required by the court, upon granting the license:

3. That he took the oath prescribed in this chapter:

4. That he gave notice of the time and place of sale, as prescribed by law: and,

5. That the premises were sold accordingly by public auction, and are held by one who purchased them in good faith.

Liability of guardian for misconduct.

Sec. 24. If, in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage, in a suit on the bond of such guardian, or otherwise, as the case may require.

When sale not held void, in case of adverse claimant.

Sec. 25. If the validity of any sale, made by a guardian under the provisions of this chapter, shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings, provided it shall appear that the guardian was licensed to make the sale by the proper probate court, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

CHAPTER 65.

OF THE SALE OF LANDS FOR THE PAYMENT OF DEBTS, BY EXECUTORS, ADMINISTRATORS AND GUARDIANS.

When real estate may be sold for payment of debts.

Section 1. When the personal estate of any deceased person, in the hands of his executor or administrator, shall be insufficient to pay all his debts, with the charges of administering his estate, his executor or administrator may sell his real estate, for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

Petition to be presented; what to set forth.

Sec. 2. In order to obtain such license, the executor or administrator shall present a petition to the probate court from which he received his appointment, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the deceased as far as the same can be ascertained; a description of all the real estate of which the testator or intestate died seized, and the condition and value of the respective portions or lots; which petition shall be verified by the oath of the party presenting the same.

Order to show cause why license should not be granted.

Sec. 3. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole or some portion of the real estate for the payment of such debts, the judge of probate shall thereupon make an order, directing all persons interested in the estate to appear before him at a time and place therein to be specified, not less than six weeks, and not more than ten weeks from the time of making such order, to show cause why a license should not be granted to the executor or administrator applying therefor, to sell so much of the real estate of the deceased as shall be necessary to pay such debts.

Copy of order to be served or published; when notice dispensed with.

Sec. 4. A copy of such order to show cause shall be personally served on all persons interested in the estate, at least fourteen days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court shall order; provided, however, if all persons interested in the estate shall signify, in writing, their assent to such sale, the notice may be dispensed with.

Hearing.

Sec. 5. The judge of probate, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service or publication of a copy of the order, or upon filing the consent in writing to such sale of all the persons interested, shall proceed to the hearing of such petition, and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioner, and of all persons interested in the estate, who shall think proper to oppose the application.

Petitioner and witnesses may be examined, &c.

Sec. 6. The executor or administrator may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the judge of probate, in the same manner, and with the like effect as in other cases.

Probate court may license sale of whole or part of real estate.

Sec. 7. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, said court may authorize the sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interest of all concerned.

Executor, &c., to give bond in certain cases before sale.

Sec. 8. When the executor or administrator is authorized to sell more than is necessary for the payment of debts, he shall, before the sale, give bond to the judge of probate with sufficient sureties to account for all the proceeds of the sale that shall remain after payment of the debts and charges, and to dispose of the same according to law; and in all cases where license is granted for the sale of real estate, the judge of probate may require a further bond from the executor or administrator, when he shall deem it necessary.

Proceeds of sale deemed assets, and to be accounted for as such.

SEC. 9. The proceeds of any real estate sold for the payment of debts, and the charges of administration, as provided in this chapter, shall be deemed assets in the hands of the executor or administrator, in like manner as if the same had been originally part of the goods and chattels of the deceased; and the executor or administrator, and the sureties in his administration bond, shall be accountable and chargeable therefor.

No licence to sell to be granted, if bond given for payment of debts.

SEC. 10. No license to sell real estate shall be granted, if any of the persons interested in the estate shall give bond to the judge of probate, in such sum and with such sureties as he shall direct and approve, with condition to pay all the debts, and the expenses of administration, so far as the goods and chattels, rights and credits of the deceased shall be insufficient therefor, within such time as the judge of probate shall direct.

For whose benefit bond may be prosecuted.

SEC. 11. The bond mentioned in the preceding section, shall be for the security, and may be prosecuted for the benefit of the creditors, as well as the executor or administrator.

When court may order sale.

SEC. 12. If the judge of probate shall be satisfied, after a full hearing upon the petition, and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of valid claims against the deceased, and charges of administration, or if such sale be assented to by all persons interested, he shall thereupon make an order of sale, authorizing the executor or administrator to sell the whole, or so much, and such part of the real estate described in the petition, as he shall judge necessary or beneficial.

Order of sale to specify lands to be sold, and the order of the sale.

SEC. 13. The order shall specify the lands to be sold; and the judge of probate may therein direct the order in which several tracts, lots or parcels, shall be sold; and if it appear that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the judge of probate shall order that part descended to heirs, to be sold before that so devised; and if it appear that any lands devised or descended, have been sold by the heirs or devisees, then the lands in their hands remaining unsold shall be ordered to be first sold.

Certified copy of order to be delivered to executor, &c.

SEC. 14. Upon the making of such order, and the filing with the judge of probate of such bond as is required by the provisions of this chapter, a certified copy of the order of sale shall be delivered by the judge of probate to the executor or administrator, who shall thereupon be authorized to sell the real estate as therein directed, within one year after the making of the order, but not after that period.

Sale of reversion of dower.

SEC. 15. License to sell real estate, as provided in this chapter, may extend to the reversion of the dower of the widow of a deceased person, and if such reversion be not sold with the other real estate, it may be sold after the expiration of the widow's term.

Notice of sale.

SEC. 16. When a sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the town or ward in which the land is situated, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the court may direct, for three weeks successively next before such sale; in which notice the lands and tenements to be sold shall be described with common certainty.

Where, when and how sale to be made.

SEC. 17. Such sale shall be in the county where the lands are situated, at public vendue, between the hours of nine o'clock in the morning, and the setting of the sun the same day.

Executor, &c., forbidden to purchase.

SEC. 18. The executor or administrator making the sale, and the guardian of any minor heir of the deceased, shall not directly or indirectly purchase, or be interested in the purchase of any part of the real estate so sold, and all sales made contrary to the provisions of this section shall be void; but this section shall not prohibit any such purchase by a guardian for the benefit of his ward.

Credit on sale.

SEC. 19. On such sale, the executor or administrator may give such length of credit, not exceeding three years, and for not more than three-fourths of the purchase money, as shall seem best calculated to produce the highest price, and shall have been directed, or shall be approved by the judge of probate, and shall secure the moneys for which credit is given, by a bond of the purchaser, and by a mortgage of the premises sold.

Return by executor, &c.; and proceedings of the court thereupon.

SEC. 20. The executor or administrator making any sale shall immediately make a return of his proceedings, upon the order of sale in pursuance of which it is made, to the judge of probate granting the same, who shall examine the proceedings, and may also examine such executor or administrator or any other person on oath, touching the same; and if he shall be of opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid, at least ten per cent exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale, and direct another to be had; of which notice shall be given, and the sale shall be in all respects conducted as if no previous sale had taken place.

If sale fair, &c., order of confirmation to be made.

SEC. 21. If it shall appear to the judge of probate that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum as above specified cannot be obtained, he shall make an order confirming such sale and directing conveyances to be executed.

Executor, &c., to take oath before sale.

SEC. 22. Every executor or administrator authorized to sell real estate as provided in this chapter, shall, before making such sale, take and subscribe an oath before the judge of probate or some other officer authorized to administer oaths, that in disposing of the real estate which he is licensed to sell, he will exert his best endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested; which oath shall be filed with the judge of probate before confirmation of the sale.

Affidavit of notice of sale.

SEC. 23. An affidavit of the executor or administrator, or of some other person having knowledge of the fact, that notice of any such sale was given as provided in this chapter, being made before the judge of probate or some other officer authorized to administer oaths, and filed and recorded in the probate court, together with a copy of the notice, shall be admitted as evidence of the time, place and manner of giving the notice.

Postponement of sale.

SEC. 24. If, at the time appointed for any such sale, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale should be postponed, he may adjourn the same from time to time, not exceeding in all three months.

Notice of adjournment of sale.

SEC. 25 In case of such adjournment, notice thereof shall be given by a public declaration at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice shall be given by posting, or publishing the same, or both, as the time and circumstances may admit.

Sale for payment of legacies may be authorized.

SEC. 26. When a testator shall have given any legacy, by a will that is effectual to pass, or charge real estate, and his goods, chattels, rights and credits, shall be insufficient to pay such legacy, together with his debts and the charges of administration, the executor or administrator with the will annexed, may be licensed to sell his real estate for that purpose, in the same manner and upon the same terms and conditions as are prescribed in this chapter, in the case of a sale for the payment of debts.

Interest in land held under contract may be sold.

SEC. 27. If a deceased person, at the time of his death, was possessed of a contract for the purchase of land, his interest in such land, and under such contract, may be sold on the application of his executor or administrator, in the same cases, and in the same manner as if he had died seized of such land; and the same proceedings may be had for that purpose as are prescribed in this chapter, in respect to lands of which he died seized, except as hereinafter provided.

Sale to be made subject to payments to become due; indemnity to be given.

SEC. 28. Such sale shall be made subject to all payments that may thereafter become due on such contract; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the judge of probate, until the purchaser shall execute a bond to the executor or administrator, for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the judge of probate shall approve.

Condition of bond of indemnity.

SEC. 29. Such bond shall be conditioned that such purchaser will make all payments for such land, that shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the persons so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payment thereafter to become due on such contract, no bond shall be required of the purchaser.

Assignment of contract, and rights of purchaser.

SEC. 30. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of such contract; which assignment shall vest in the purchaser, his heirs and assigns, all the right, interest and title of the persons entitled to the interest of the deceased in the land sold, at the time of the sale; and such purchaser shall have the same rights and remedies against the vendor of such land, as the deceased would have had, if he were living.

Proceeds of sale, how disposed of.

Sec. 31. The proceeds of every such sale of the interest of the deceased person in lands under contract as hereinbefore mentioned, shall be disposed of in all respects in the same manner as the proceeds of the sale of lands of which the deceased died seized, according to the provisions of this chapter.

Sales to be made subject to incumbrances.

Sec. 32. All sales and conveyances of land made by executors or administrators pursuant to the provisions of this chapter, shall be subject to all charges thereon, by mortgage or otherwise, existing at the time of the death of the testator or intestate; and in case the estate of the deceased shall be in any way liable for the amount secured by any such mortgage, or for any such charge, such sale shall not be confirmed by the judge of probate, until the purchaser shall execute a bond to the executor or administrator, as required in this chapter in the case of a sale of a contract for the purchase of land, on which payments are to become due.

Foreign executor, &c., may file copy of his appointment.

Sec. 33. When an executor or administrator shall be appointed in any other state, or in any foreign country, on the estate of any person dying out of this state, and no executor or administrator thereon shall be appointed in this state, the foreign executor or administrator may file an authenticated copy of his appointment, in the probate court of any county in which there may be any real estate of the deceased.

May be licensed to sell lands for payment of debts and legacies.

Sec. 34. Upon filing such authenticated copy of his appointment, such foreign executor or administrator may be licensed by the same probate court to sell real estate for the payment of debts or legacies, and charges of administration, in the same manner, and upon the same terms and conditions, as are prescribed in the case of an executor or administrator appointed in this state, excepting in the particulars in which a different provision is hereinafter made.

When no further bond necessary.

Sec. 35. When it shall appear to the court granting the license, that such foreign executor or administrator is bound, with sufficient surety or sureties, in the state or country in which he was appointed, to account for the proceeds of such sale, for the payment of debts or legacies, and charges of administration, and a copy of such bond duly authenticated, shall be filed in such probate court, no further bond for that purpose shall be required of him by the court.

When bond required, and what to contain.

Sec. 36. If an authenticated copy of such bond shall not be filed as mentioned in the preceding section, such foreign executor or administrator, before making such sale, shall give bond with sufficient sureties to the judge of probate, with condition to account for and dispose of the proceeds of such sale for the payment of the debts or legacies of the deceased, and the charges of administration, according to the law of the state or country in which he was appointed.

When licensed to sell more than is necessary to pay debts, &c., bond to be given.

Sec. 37. When such foreign executor or administrator is licensed to sell more than is necessary for the payment of debts, legacies, and charges of administration, as before provided for in this chapter, he shall, before making the sale, give bond with sufficient sureties to the judge of probate, with condition to account to him for all the proceeds of the sale that shall remain after payment of the said debts, legacies and charges, and to dispose of the same according to law.

Guardian, when may be licensed, to sell real estate of ward.

SEC. 38. When the goods, chattels, rights and credits in the hands of the guardian of any minor, or of any idiot or insane person, or any person under guardianship on account of excessive drinking, gaming, idleness or debauchery, shall be insufficient to pay all the just debts of his ward, with the charges of managing his estate, the guardian may be licensed by the probate court of the county in which such guardian was appointed, to sell his real estate for that purpose, in like manner, and upon the same terms and conditions, as are prescribed in this chapter in the case of a sale by executors or administrators, excepting in the particulars in which a different provision is hereinafter made.

Court may license sale of whole or part of ward's estate.

SEC. 39. If it shall be represented by the guardian in his petition, and shall appear to the court, that it is necessary to sell some part of the real estate of the ward, and that by such partial sale the residue of the real estate, or of some specific piece or part thereof, would be greatly injured, the court may license a sale of the whole of the estate, or of such part thereof as the court shall judge necessary, and most for the interest of all concerned.

Guardian to give bond.

SEC. 40. The guardian shall give bond to the judge of probate to account for the surplus of the proceeds of the sale, in like manner as is prescribed in this chapter in the case of a like sale by an executor or administrator.

When license not to be granted without the approbation of supervisors of the town.

SEC. 41. No license shall be granted to any guardian, to sell real estate of his ward as provided in this chapter, in any case excepting that of minors, unless the supervisors of the town of which the ward is an inhabitant, or in which he resides, shall certify to the judge of probate, in writing, their approbation of such proposed sale, and that they deem it necessary.

Who entitled to notice of hearing.

SEC. 42. All those who are next of kin, and heirs apparent or presumptive of the ward, shall be considered as interested in the estate, and may appear as such and answer to the petition of the guardian; and when personal notice of the time and place of hearing the petition, is required to be given, they shall be notified as persons interested, according to the provisions respecting similar sales by executors and administrators, contained in this chapter.

Foreign guardian may file copy of his appointment.

SEC. 43. When any minor, insane person or spendthrift, residing out of this state, shall be put under guardianship in the state or country in which he resides, and shall have no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment in the probate court of any county in which there may be any real estate of the ward.

May be licensed to sell real estate of ward.

SEC. 44. After filing an authenticated copy of his appointment, such foreign guardian may be licensed to sell the real estate, for the payment of the debts of the ward, and the charges of managing his estate, in the same manner, and upon the same terms and conditions as are prescribed in this chapter in the case of a guardian appointed in this state, excepting in the particulars wherein a different provision is hereinafter made.

When bond required and when no.

SEC. 45. When it shall appear to the judge of probate, that the foreign guardian is bound, with sufficient surety or sureties, in the state or country where he was appointed, to account for the proceeds of such sale, and an authenticated copy of such bond shall be filed in the probate court, no further bond shall be required here; otherwise, he shall give bond, in like manner as is prescribed in this chapter in the case of sales by foreign executors or administrators.

When licensed to sell more than is necessary to pay debts, bond to be given.

Sec. 46. When such foreign guardian is authorised to sell more than is necessary to pay the debts and charges, he shall before making the sale, give bond with sufficient surety or sureties, to the judge of probate, with condition to account before such judge, for all the proceeds of the sale that shall remain, after payment of the said debts and charges, and to dispose of the same according to law.

Surplus to be considered real estate.

Sec. 47. In all cases of a sale by an executor, administrator or guardian, of part or the whole of the real estate of his testator, intestate or ward, under a license granted by any probate court, by virtue of the provisions of this chapter, whether such executor, administrator or guardian was appointed in this state or elsewhere, the surplus of the proceeds of the sale, remaining on the final settlement of the accounts, shall be considered as real estate, and disposed of among the persons, and in the same proportions as the real estate would have been by the laws of this state, if it had not been sold.

Guardian to take oath before sale.

Sec. 48. Every guardian, whether appointed in this state or elsewhere, when licensed to sell real estate, as provided in this chapter, shall, before making such sale, take and subscribe an oath like that required in the same case of an executor or administrator; and notice shall be given, and the proceedings shall be conducted in the like manner as is prescribed in the case of an executor or administrator, and the evidence of giving such notice may be perpetuated in the same manner.

When court may award costs.

Sec. 49. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, by an executor, administrator or guardian, and if it shall appear to the court, either that the petition, or the objection thereto is unreasonable, the court may, in its discretion, award costs to the party prevailing, and may enforce the payment thereof.

Limitations of actions to recover estate sold.

Sec. 50. No action for the recovery of any estate sold by an executor or administrator under the provisions of this chapter, shall be maintained by any heir or other person claiming under the deceased testator or intestate, unless it be commenced within five years next after the sale; and no action for any estate sold in like manner by a guardian, shall be maintained by the ward or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, except as hereinafter provided.

Minors and others under disability.

Sec. 51. The preceding section shall not apply to persons out of the state, nor to minors, or others under any legal disability to sue, at the time when the right of action shall first accrue; but all such persons may commence such action at any time within five years after the removal of the disability, or their return to this state.

Sale not avoided on account of certain irregularities when title contested by ward, &c.

SEC. 52. In case of an action relating to any estate sold by an executor, administrator or guardian, in which an heir or other person claiming under the deceased, or in which the ward, or any person claiming under him shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings, provided it shall appear,

1. That the executor, administrator or guardian was licensed to make the sale by the probate court having jurisdiction:

2. That he gave a bond which was approved by the judge of probate, in case a bond was required upon granting a license:

3. That he took the oath prescribed in this chapter:

4. That he gave notice of the time and place of sale as in this chapter prescribed: and,

5. That the premises were sold accordingly, and the sale confirmed by the court, and that they are held by one who purchased them in good faith.

Damages recoverable for misconduct in relation to sale.

SEC. 53. If there shall be any neglect or misconduct in the proceedings of the executor, administrator or guardian, in relation to such sale, by which any person interested in the estate shall suffer damages, such aggrieved party may recover the same in a suit on the probate bond, or otherwise, as the case may require.

Sale not avoided for certain irregularities, when title contested by adverse claimant.

SEC. 54. If the validity of a sale made by an executor, administrator or guardian, shall be drawn in question by any person claiming adversely to the title of the deceased testator or intestate, or of the ward; or claiming under any title that is not derived from or through the deceased person or the ward, the sale shall not be held void on account of any irregularity in the proceedings; provided it shall appear that the executor, administrator or guardian was licensed to make the sale by a probate court having jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

Liability of executor, &c. for fraud.

SEC. 55. Any executor, administrator or guardian, who shall fraudulently sell any real estate of his testator, intestate or ward, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages to be recovered in an action on the case by the person having an estate of inheritance therein.

TITLE XVIII.

CHAPTER 66.

OF WILLS OF REAL AND PERSONAL ESTATE.

Who may devise lands, &c.

SECTION 1. Every person of full age and sound mind, being seized in his own right of any lands, or of any right thereto, or entitled to any interest therein, descendible to his heirs, may devise and dispose of the same by his last will and testament in writing; and all such estate not disposed of by will, shall descend as the estate of an intestate, being chargeable, in both cases, with the payment of all his debts; and any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament in writing, and may alter or revoke the same in like manner that a person under no disability may do the same: Provided, that no such will, alteration or revocation shall be of any validity without the consent of the husband of such married woman, in writing, annexed to such will, alteration or revocation, and attested and subscribed, and to be proven and recorded in like manner as a last will and testament is required to be witnessed, proven and recorded.

Construction of devise.

SEC. 2. Every devise of land, in any will hereafter made, shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that the devisor intended to convey a less estate.

Estate in lands acquired after making will, how to pass.

SEC. 3. Any estate, right, or interest in lands, acquired by the testator after the making of his will, shall pass thereby in like manner as if possessed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

Who may bequeath personal estate.

SEC. 4. Every person of full age and sound mind may, by his last will and testament, in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his rights thereto, and interest therein, and all such estate, not disposed of by the will shall be administered as intestate estate.

How wills to be executed.
*See "Errata."

[SEC. 5.* No will made within this state, except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to charge, or in any way affect the same, unless it be in writing, and signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.]

Noncupative wills, how made, &c.

SEC. 6. No nuncupative will shall be good, when the estate thereby bequeathed shall exceed the value of one hundred and fifty dollars, that is not proved by the oath of three witnesses, at least, that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will; or to that effect; nor unless such nuncupative will were made at the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more, next before the making of such will, except where such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

How same proved.

SEC. 7. After six months shall have passed after speaking any pretended testamentary words, no testimony shall be received to prove the same as a nuncupative will, unless the said words, or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken. Nor shall letters testamentary or probate of any nuncupative will pass the seal of any probate court, until fourteen days at least after the decease of the testator be fully expired. Nor shall any nuncupative will be at any time approved and allowed, unless process shall first have issued to call in the widow and other person or persons principally interested, if resident within the state, to the end that they may contest the same if they please. Nothing herein contained shall prevent any soldier, being in actual service, nor any mariner, being on ship board, from disposing of his wages and other personal estate, by a nuncupative will.

Soldiers and mariners may dispose of wages. &c.

When legacy, &c., to subscribing witness void.

SEC. 8. All beneficial devises, legacies and gifts whatsoever, made or given in any will to a subscribing witness thereto, shall be wholly void, unless there be two other competent subscribing witnesses to the same; but a mere charge on the lands of the devisor for the payment of debts, shall not prevent his creditors from being competent witnesses to his will.

When share of estate to be saved to subscribing witness.

SEC. 9. But if such witness to whom any beneficial devise may have been made or given, would have been entitled to any share of the estate of the testator, in case the will was not established, then so much of the share that would have descended or been distributed to such witness as will not exceed the devise or bequest made to him in the will, shall be saved to him, and he may recover the same of the devisees or legatees named in the will, in proportion to, and out of the parts devised or bequeathed to them.

Revocation of wills.

SEC 10. No will nor any part thereof shall be revoked, unless by burning, tearing, cancelling or obliterating the same, with the intention of revoking it, by the testator, or by some person in his presence and by his direction; or by some other will or codicil in writing, executed as prescribed in this chapter; or by some other writing, signed, attested and subscribed in the manner provided in this chapter for the execution of a will; excepting only that nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

How will may be deposited with judge of probate.

Sec. 11. Any will in writing, being inclosed in a sealed wrapper, and having indorsed thereon the name of the testator and his place of residence, and the day when, and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the judge of probate in the county where the testator lives, and the judge of probate shall receive and safely keep such will and give a certificate of the deposit thereof.

How such wil kept and disposed of.

Sec. 12. Such will shall, during the lifetime of the testator, be delivered only to himself, or to some person authorised by him by an order in writing, duly proved by the oath of a subscribing witness; and after the death of the testator, and at the first probate court after notice thereof, it shall be publicly opened by the judge of probate, and be retained by him.

Judge of probate to give notice of his possession of will.

Sec. 13. The judge of probate shall give notice of such will being in his possession, to the executor therein appointed, if there be one, otherwise to the persons interested in the provisions of the will; or if the jurisdiction of the case belongs to any other court, such will shall be delivered to the executor, or to some other trusty person, interested in the provisions of the same, to be presented for probate in such other court.

Others having custody of will, to deliver same in 30 days.

Sec. 14. Every person other than the judge of probate, having the custody of any will, shall, within thirty days after he has knowledge of the death of the testator, deliver the same into the probate court which has jurisdiction of the case, or to the person named in the will as executor.

Within what time executor to present will to probate court.

Sec. 15. Every person named as executor in any will, shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, if he obtains such knowledge after the death of the testator, present such will to the probate court which has jurisdiction of the case, unless the will shall have been otherwise deposited with the judge of probate; and shall, within the period above mentioned, signify to the court his acceptance of the trust, or make known in writing to such court his refusal to accept it.

Liability for neglect of duties in certain cases.

Sec. 16. Every person who shall neglect to perform any of the duties required in the two last preceding sections, without reasonable cause, shall be guilty of a misdemeanor, and shall be liable to each and every person interested in such will, for the damages which each person may sustain thereby.

When person having custody of will may be committed for neglect to deliver same to probate court.

Sec. 17. If any person, having the custody of any will, after the death of the testator, shall, without reasonable cause neglect to deliver the same to the probate court having jurisdiction of it, after he shall have been duly notified by such court for that purpose, he may be committed to the jail of the county, by warrant issued by such court, and there be kept in close confinement until he shall deliver the will as above directed.

Notice of time and place of proving will.

Sec. 18. When any will shall have been delivered into or deposited in any probate court having jurisdiction of the same, such court shall appoint a time and place for proving it, when all concerned may appear and contest the probate of the will, and shall cause public notice thereof to be given by personal service on all persons interested, or by publication under an order of such court, in such newspaper printed in this state, as the judge shall direct, three weeks successively, previous to the time appointed; and no will shall be proved until notice shall be given as herein provided.

When probate may be granted on testimony of one witness.

SEC. 19. If no person shall appear to contest the probate of a will at the time appointed for that purpose, the court may, in its discretion, grant probate thereof, on the testimony of one of the subscribing witnesses only, if such witness shall testify that such will was executed in all the particulars as required in this chapter, and that the testator was of a sound mind at the time of the execution thereof.

When other witnesses may be admitted to prove will.

SEC. 20. If none of the subscribing witnesses shall reside in this state, at the time appointed for proving the will, the court may in its discretion, admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution of the will, may admit proof of the hand writing of the testator and of the subscribing witnesses.

Effect of proof and allowance of will in probate court.

SEC. 21. No will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the probate court as provided in this chapter, or on appeal, in the circuit court or supreme court; and the probate of a will of real or personal estate, as above mentioned, shall be conclusive as to its due execution.

Wills proved and allowed in other states, &c.

SEC. 22. All wills which shall have been duly proved and allowed in any other of the United States, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed and recorded in the probate court of any county, in which the testator shall have real and personal estate on which such will may operate, in the manner mentioned in the following sections.

When copy of will and probate produced, notice to be given.

SEC. 23. When a copy of such will, and the probate thereof, duly authenticated, shall be produced by the executor or other person interested in such will, to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in the case of an original will presented for probate.

If will allowed, copy to be filed and recorded, &c.

SEC. 24. If, on hearing the case, it shall appear to the court that the instrument ought to be allowed in this state, as the last will and testament of the deceased, the copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

Letters testamentary, &c, on such will.

SEC. 25. When any will shall be allowed, as mentioned in the preceding section, the probate court shall grant letters testamentary, or letters of administration with the will annexed; and such letters testamentary or letters of administration shall extend to all the estate of the testator in this state; and such estate, after payment of his just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it; and the residue shall be disposed of as is provided by law in cases of estates in this state, belonging to persons who are inhabitants of any other state or country.

Provision for children born after making of will.

SEC. 26. When any child shall be born after the making of his parent's will, and no provision shall be made therein for him, such child shall have the same share in the estate of the testator, as if he had died intestate; and the share of such child shall be assigned to him as provided by law in case of intestate estates, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child.

When provision for child omitted by mistake, &c.

Sec. 27. When any testator shall omit to provide in his will for any of his children, or for the issue of any deceased child, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section.

From what estate such provision to be taken.

Sec. 28. When any share of the estate of a testator shall be assigned to a child born after the making of a will, or to a child, or the issue of a child omitted in the will, as herein before mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees or legatees, in proportion to the value of the estate they may respectively receive under the will, unless the obvious intention of the testator, in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in which case, such specific devise, legacy or provision may be exempted from such apportionment, and a different apportionment may be adopted, in the discretion of the probate court.

When the issue of deceased legatee, &c., to take estate.

Sec. 29. When a devise or legacy shall be made to any child, or other relation of the testator, and the devisee or legatee shall die before the testator, leaving issue who shall survive the testator, such issue shall take the estate so given by the will, in the same manner as the devisee or legatee would have done if he had survived the testator, unless a different disposition shall be made or directed by the will.

Estate of testator liable for payment of debts, &c.; allowance for maintenance of widow, &c.

Sec. 30. All the estate of the testator, real and personal, shall be liable to be disposed of for the payment of his debts, and the expenses of administering his estate, and the probate court may make such reasonable allowance as may be judged necessary for the expenses of the maintenance of the widow and minor children, or either, constituting the family of the testator, out of his personal estate, or the income of his real estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate shall be assigned to them.

Estate appropriated by will to payment of debts, &c.

Sec. 31. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, or so far as the same may be sufficient.

When provision insufficient, &c.

Sec. 32. If the provision made by the will, or the estate appropriated, shall not be sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real or personal, as shall not have been disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

Estate given by will liable to payment of debts,

Sec. 33. The estate, real or personal, given by will to any devisees or legatees, shall be held liable to the payment of the debts, CHAPTER 66. &c.—when certain devises, &c., to be exempted.

expenses of administration and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies, and the persons to whom they shall be made, may be exempted, if it shall appear to the court necessary, in order to carry into effect the intention of the testator, if there shall be other sufficient estate.

Estates given by will, and liable for payment of debts, &c, may be retained by executor until assignment, &c.

SEC. 34. When the estate given by any will shall be liable for the payment of debts and expenses as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child, or of the issue of a child not provided for in the will as herein before provided, the executor shall have a right to retain possession of the same, until such liability shall be settled by order of the probate court, and until the devises and legacies so liable shall be accordingly assigned by order of such court; and when the same can properly be done, any devisee or legatee may make his claim to such court, to have such liability settled, and his devise or legacy assigned to him.

When devisee or legatee to hold subject to liability to contribute, &c

SEC. 35. All the devisees and legatees who shall, with the consent of the executor, or otherwise, have possession of the estate given to them by will before such liability shall be settled by the probate court, shall hold the same subject to the several liabilities mentioned in the preceding section, and shall be held to contribute, according to their respective liabilities to the executor, or to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child, or the issue of a child omitted in the will; and the persons who may, as heirs, have received the estate not disposed of by the will, as provided in this chapter, shall be liable to contribute in like manner as the devisees or legatees.

When liable for loss in case of insolvency of person liable to contribute.

SEC. 36. If any of the persons liable to contribute, according to the provisions of the preceding section, shall be insolvent and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency, in proportion to, and to the extent of, the estate they may have received; and if any of the persons so liable to contribute shall die before having paid his share, the claim shall be valid against his estate, in the same manner as if it had been his proper debt.

Settlement of liabilities by decree of probate court.

SEC. 37. The probate court may, by decree for that purpose, settle the amount of the several liabilities, as provided in the preceding sections, and decree how much, and in what manner, each person shall contribute, and may issue execution as circumstances may require; and the claimant may also have a remedy, in any proper action or complaint in law or equity.

Wills and copies, how made evidence.

SEC. 38. Every will, when proved as provided in this chapter, shall have a certificate of such proof indorsed thereon or annexed thereto, signed by the judge of probate, and attested by his seal, and every will so certified, and the record thereof, or a transcript of such record, certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this state, without further proof.

Attested copy to be recorded in registry of deeds.

Sec. 39. An attested copy of every will devising lands, or any interest in lands, and of the probate thereof, shall be recorded in the registry of deeds of the county in which the lands thereby devised are situated.

Construction of the term "executor."

Sec. 40. The word "executor," in this and the subsequent chapters, shall be construed to include an administrator with the will annexed.

TITLE XIX.

OF THE SETTLEMENT OF ESTATES OF DECEASED PERSONS.

CHAPTER 67 Of letters testamentary and other proceedings on the probate of a will.
68. Of the administration and distribution of the estates of intestates.
69. Of the inventory and collection of the effects of deceased persons.
70. Of the payment of debts and legacies of deceased persons.
71. Of rendering accounts by executors and administrators.
72. Of the partition and distribution of estates.
73. Of probate bonds and the prosecution of them.
74. Of the conveyance of real estate by executors and administrators in certain cases.

CHAPTER 67.

OF LETTERS TESTAMENTARY AND OTHER PROCEEDINGS ON THE PROBATE OF A WILL.

Letters testamentary, to whom issued.

SECTION 1. When a will shall have been duly proved and allowed, the probate court shall issue letters testamentary thereon, to the person named executor therein, if he is legally competent, and shall accept the trust and give bond as required by law.

Bond to be given, and conditions of same.

SEC. 2. Every executor, before he shall enter upon the execution of his trust, and before letters testamentary shall issue, shall give bond to the judge of probate in such reasonable sum as he may direct, with one or more sufficient sureties, with conditions as follows:

1. To make and return to the probate court, within three months, a true and perfect inventory of all the goods, chattels, rights, credits and estate of the deceased, which shall come to his possession or knowledge, or to the possession of any other person for him:

2. To administer, according to law and to the will of the testator, all his goods, chattels, rights, credits and estate, which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay and discharge all debts, legacies, and charges, chargeable on the same, or such dividends thereon, as shall be ordered and decreed by the probate court:

3. To render a true and just account of his administration to

the probate court within one year, and at any other time when required by such court:

4. To perform all orders and decrees of the probate court, by the executor to be performed in the premises.

Bond in case executor is residuary legatee.

Sec. 3. If, however, the executor shall be residuary legatee, instead of the bond prescribed in the preceding section, he may give a bond in such sum and with such sureties as the court may direct, with a condition only to pay all the debts and legacies of the testator; and in such case, he shall not be required to return an inventory.

Refusal to accept trust, and neglect to give bond.

Sec. 4. No person named as executor in any will, who shall refuse to accept the trust, or shall neglect to give bond as prescribed in this chapter, for twenty days after the probate of such will, shall intermeddle or act as executor.

When executor refuses to accept, &c., letters to be issued to others.

Sec. 5. If a person named executor in any will, shall refuse to accept the trust, or shall, for the space of twenty days after the probate of the same, neglect to give bond as required by law, the probate court may grant letters testamentary to the other executors, if there be any who are capable and willing to accept the trust; and if there be no such other executor, who will give bond, the court may commit administration of the estate with the will annexed, to such person as would have been entitled to the same, if the testator had died intestate.

Administration in case of minority of executor.

Sec. 6. When the person named executor in any will, is under full age at the time of proving the will, administration shall be granted with the will annexed, during the minority of the executor, unless there shall be another executor who shall accept the trust and give bond; and, in that case, the executor who shall give bond, shall have letters testamentary, and shall administer the estate, until the minor shall arrive at full age, when he may be admitted as joint executor, on giving bond according to law.

Administrator with the will annexed to give bond, &c.

Sec. 7. Every person who shall be appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give bond to the judge of probate, in the same manner, and with the same conditions, as is required of an executor, and shall proceed in all things to execute the trust in the same manner as an executor would be required to do.

Marriage of executrix extinguishes her authority.

Sec. 8. When an unmarried woman, appointed an executrix, alone or jointly with another person, shall marry, her marriage shall extinguish her authority as executrix, and her husband shall not be executor in her right.

When executor may be removed.

Sec. 9. If an executor shall reside out of this state, or shall neglect, after due notice given by the judge of probate, to render his account and settle the estate according to law, or to perform any decree of the court, or shall abscond or become insane, or otherwise incapable or unsuitable to discharge the trust, the probate court may remove such executor.

When remaining executor to execute trust, &c.

Sec. 10. When an executor shall die or be removed, or his authority shall be extinguished, the remaining executor, if there be any, may execute the trust; and if there shall be no other executor, administration with the will annexed may be granted, of the estate not already administered.

When all executors not authorized, those authorized may execute the will.

SEC. 11. When all the executors appointed in any will, shall not be authorized, according to the provisions of this chapter, to act as such, such as are authorized shall have the same authority to perform every act, and discharge every trust required and allowed by the will, and their acts shall be as valid and effectual for every purpose, as if all were authorized, and should act together; and administrators with the will annexed, shall have the same authority to perform every act, and discharge every trust, as the executor named in the will would have had, and their acts shall be as valid and effectual for every purpose.

Executor of executor not to administer.

SEC. 12. The executor of an executor shall not, as such, have any authority to administer the estate of the first testator; but, on the death of the only surviving executor of any will, administration of the estate of the first testator, not already administered, may be granted with the will annexed, to such person as the probate court may judge proper.

Separate or joint bonds may be taken.

SEC. 13. When two or more persons shall be appointed executors of any will, the judge of probate may take a separate bond from each of them with sureties, or a joint bond from all of them with sureties.

CHAPTER 68.

OF THE ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

Application and distribution of personal estate.

SECTION 1. When any person shall die possessed of any personal estate, or of any right or interest therein not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

1. The widow, if any, shall be allowed all her articles of apparel and ornament, and all the wearing apparel and ornaments of the deceased, the household furniture of the deceased, not exceeding in value two hundred and fifty dollars; and other personal property to be selected by her, not exceeding in value two hundred dollars, and this allowance shall be made, as well when the widow waives the provision made for her in the will of her husband, as when he dies intestate:

2. The widow and children, constituting the family of the deceased, shall have such reasonable allowance out of the personal estate, as the probate court shall judge necessary for their maintenance during the progress of the settlement of the estate, according to their circumstances; which, in case of an insolvent estate, shall not be longer than one year after granting administration, nor for any time after the dower and personal estate shall be assigned to the widow:

3. When a person shall die, leaving children under seven years of age, having no mother, or when the mother shall die before the

children shall arrive at the age of seven years, an allowance shall be made for the necessary maintenance of such children, until they arrive at the age of seven years, out of such part of the personal estate, and the income of such part of the real estate, as would have been assigned to their mother if she had been living:

4. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of one hundred and fifty dollars, the probate court may, by a decree for that purpose, assign, for the use and support of the widow and children of such intestate, or for the support of the children under seven years of age, if there be no widow, the whole of such estate, after the payment of the funeral charges, and expenses of administration:

5. If the personal estate shall amount to more than one hundred and fifty dollars, and more than the allowances mentioned in the preceding subdivisions of this section, the same shall be applied to the payment of the debts of the deceased, with the charges of his funeral and of settling his estate:

6. The residue, if any, of the personal estate shall be distributed in the same proportions, and to the same persons, and for the same purposes, as prescribed for the descent and disposition of the real estate, except that the widow, if any, shall be entitled to receive the same share of such residue, as a child of such intestate would be entitled to.

What probate court to have jurisdiction.

Sec. 2. When any person shall die intestate, being an inhabitant of this state, letters of administration of his estate shall be granted by the probate court of the county of which he was an inhabitant or resident, at the time of his death; if such deceased person, at the time of his death, reside in any other state or country, leaving estate to be administered in this state, administration thereof shall be granted by the probate court of any county in which there shall be estate to be administered; and the administration first legally granted shall extend to all the estate of the deceased in this state, and shall exclude the jurisdiction of the probate court of every other county.

Who entitled to letters of administration.

Sec. 3. Administration of the estate of a person dying intestate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same, in the following order:

1. The widow or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust:

2. If the widow or next of kin, or the person selected by them, shall be unsuitable or incompetent, or if the widow or next of kin shall neglect, for thirty days after the death of the intestate, to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it:

3. If there be no such creditor competent and willing to take administration, the same may be committed to such other person or persons as the judge of probate may think proper.

CHAPTER 68

Bond to be given by administrator.

SEC. 4. Every administrator, before he enters upon the execution of his trust, and before letters of administration shall be granted to him, shall give a bond to the judge of probate, with such surety or sureties as he shall direct and approve, with the same conditions as required in the case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

When special administrator may be appointed.

SEC. 5. When there shall be a delay in granting letters testamentary or of administration, occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the judge of probate may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question on the allowance of the will, or such other question as shall occasion the delay, shall be terminated, and an executor or administrator be thereupon appointed; and no appeal shall be allowed from the appointment of such special administrator.

Duties of special administrator.

SEC. 6. An administrator, appointed according to the provisions of the preceding section, shall collect all the goods, chattels, and debts of the deceased, and preserve the same for the executor or administrator who may afterwards be appointed, and for that purpose may commence and maintain suits as an administrator, and may sell such perishable and other personal estate as the probate court may order to be sold.

Not to pay debts, &c.

SEC. 7. Such special administrator shall not be liable to an action by any creditor, or to be called upon in any other way to pay the debts against the deceased.

Bond to be given by special administrator.

SEC. 8. Every such special administrator shall, before entering upon the duties of his trust, give a bond to the judge of probate as he shall direct, with a condition that he will make and return a true inventory of all the goods, chattels, rights, credits and effects of the deceased which shall come to his possession or knowledge, and that he will truly account for all the goods, chattels, debts and effects of the deceased which shall be received by him, whenever required by the probate court, and will deliver the same to the person who shall afterwards be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same.

When his powers to cease, &c.

SEC. 9. Upon granting letters testamentary or of administration on the estate of the deceased, the power of such special administrator shall cease; and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute to final judgment any suit commenced by such special administrator.

Liability of person embezzling or alienating goods, &c., before letters granted.

SEC. 10. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels or effects of any deceased person, such person shall stand chargeable and be liable to the action of the executor or administrator of such estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of such estate.

Administration with the will annexed, to be

SEC. 11. When any sole executor or administrator shall die, without having fully administered the estate, the probate court may grant letters of administration with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased, not already administered.

granted on death of sole executor

SEC. 12. If an administrator shall reside out of this state, or shall neglect after due notice by the judge of probate, to render his account and settle the estate according to law, or to perform any decree of such court, or shall abscond or become insane, or otherwise unsuitable or incapable to discharge the trust, the probate court may, by an order therefor, remove such administrator.

When administrator to be removed.

SEC. 13. When an unmarried woman, who is administratrix, alone or jointly with another person, shall marry, her marriage shall extinguish her authority as administratrix.

Marriage of administratrix extinguishes her authority.

SEC. 14. When an administrator shall be removed, or his authority shall be extinguished, the remaining administrator, if any, may execute the trust; if there shall be no other, the court of probate may commit administration of the estate not already administered, to some suitable person, as in case of the death of a sole administrator.

When remaining administrator to execute trust.

SEC. 15. An administrator, appointed in the place of any former executor or administrator, for the purpose of administering the estate not already administered, shall have the same powers, and shall proceed in settling the estate in the same manner, as the former executor or administrator should have had or done; and may prosecute or defend any action commenced by or against the former executor or administrator, and may have execution on any judgment recovered in the name of such former executor or administrator.

Powers, &c., of administrator *de bonis non*.

SEC. 16. If, after the granting of letters of administration by any probate court, on the estate of any deceased person, as if he had died intestate, a will of such deceased person shall be duly proved and allowed by such court, the first administration shall, by decree of said court, be revoked, and the powers of the administrator shall cease, and he shall thereupon surrender his letters of administration into the probate court, and render an account of his administration, within such time as the court shall direct.

Administration granted, to be revoked on proving will.

SEC. 17. The executor of the will shall, in such case, be entitled to demand, sue for and collect all the goods, chattels, rights and credits of the deceased, remaining unadministered, and may be admitted to prosecute to final judgement any suit commenced by the administrator, before the revocation of his letters of administration.

Powers of executor in such case.

SEC. 18. All acts of an executor or administrator as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such executor or administrator, had continued lawfully to execute the duties of his trust.

Acts of executor, &c, before revocation, valid.

SEC. 19. When two or more persons shall be appointed administrators on any estate, the judge of probate may take a separate bond from each with sureties, or a joint bond, with sureties from all.

Administrators may give joint or separate bonds.

SEC. 20. When application shall be made to the judge of probate for the appointment of an administrator on an intestate estate, or for letters of administration with the will annexed, he shall cause

Notice of application for appointment of administrator, &c., to be given.

CHAPTER 69.

notice of the same, and of the time and place of hearing thereof, to be published for three successive weeks in such newspaper as he may direct.

CHAPTER 69.

OF THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

Making and return of inventory.

SECTION 1. Every executor or administrator, shall, within three months after his appointment, make and return into the probate court a true inventory of the real estate, and of all the goods, chattels, rights and credits of the deceased, which shall have come to his possession or knowledge; excepting only that an executor, who shall be a residuary legatee, and shall have given bond to pay all the debts and legacies, as provided by law, shall not be required to return an inventory.

Estate and effects to be appraised, when appraisers to be appointed in other counties.

SEC. 2. The estate and effects comprised in the inventory, shall be appraised by two or more disinterested persons appointed by the judge of probate for that purpose, who shall be sworn to the faithful discharge of their trust; and if any part of such estate or effects shall be in any other county, appraisers thereof may be appointed, either by the judge of probate having jurisdiction of the case, or by a disinterested justice of the peace of such other county.

Appointment of appraisers by justices of the peace.

SEC 3. When appraisers shall be appointed by a justice of the peace, he shall issue an order to them in substance as follows:

State of Wisconsin,
County of *ss.*
To of , in said county:

You are hereby appointed to appraise on oath, the estate and effects of , late of , deceased, which may be in said county; and when you have performed that service, you are required to deliver this order, and your doings in pursuance thereof, to , executor (or administrator, as the case may be) of said deceased.

Given under my hand this day of in the year
, Justice of the Peace.

Appraisal, how made and certified.

SEC. 4. The appraisers shall set down opposite to each item in such inventory, distinctly, in figures, the value thereof in money, and deliver the same certified by them, together with their appointment, if made by a justice of the peace, to the executor or administrator.

Separate inventory and appraisal of household furniture, &c.

SEC. 5. A separate and distinct inventory and appraisement shall be made and returned as aforesaid, of all the household furniture and other personal property which may be allowed to the widow pursuant to the provisions of the preceding chapter, but the same shall not be considered assets in the hands of the executor or administrator.

Personal estate, first chargeable with payment of debts, and if not sufficient, real estate to be sold.

SEC. 6. The personal estate of the deceased which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits, in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased, and the expenses of administration, the whole of his real estate, except the widow's dower, or so much thereof as may be necessary, may be sold for that purpose by the executor or administrator, after obtaining license therefor in the manner provided by law.

Executor, &c., to have right to possession of real and personal estate.

SEC. 7. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents, issues and profits of the real estate, until the estate shall have been settled, or until delivered over by order of the probate court, to the heirs or devisees, and shall keep in good tenantable repair, all houses, buildings and fences thereon which are under his control.

Proceeding in case of suspected embezzlement, &c.

SEC. 8. If any executor or administrator, heir, legatee, creditor or other person interested in the estate of any deceased person, shall complain to the judge of probate, on oath that any person is suspected to have concealed, embezzled, conveyed away or disposed of any money, goods or chattels of the deceased, or that such person has in his possession or knowledge, any deeds, conveyances, bonds, contracts or other writings, which contain evidence of, or tend to disclose the right, title, interest or claim of the deceased; to any real or personal estate, or any claim or demand, or any last will and testament of the deceased, the said judge may cite such suspected person to appear before the court of probate, and may examine him on oath, upon the matter of such complaint.

Person cited refusing to appear and answer, &c., may be committed.

SEC. 9. If the person so cited shall refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the common jail of the county, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined and filed in the probate court.

Proceeding to compel account by persons intrusted with any part of estate.

SEC. 10. The judge of probate, upon the complaint on oath of any executor or administrator, may cite any person who shall have been intrusted by such executor or administrator, with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts or other papers belonging to such estate, which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited, shall refuse to appear and render such account, the court may proceed against him as provided in the preceding section.

When executor, &c., to compound with debtor.

SEC. 11. When any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compound with such debtor, and give him a discharge upon receiving a fair and just dividend of his effects.

Interest in mortgaged premises to be considered personal assets, &c.

SEC. 12. When any mortgagee of real estate, or any assignee of such mortgage, shall die without having foreclosed the right of redemption, all the interest in the mortgaged premises conveyed by such mortgage, and the debt secured thereby, shall be considered as personal assets in the hands of the executor or administrator; and he may foreclose the same, and have any other remedy for the collection of such debt which the deceased could have had if living, or may continue any proceeding commenced by the deceased for that purpose.

When executor, &c., may give release. If premises bid in, for whom executor, &c, to be seized.

SEC. 13. In case of the redemption of any such mortgage, or the sale of the mortgaged premises by virtue of a power of sale contained therein or otherwise, the money paid thereon shall be received by the executor or administrator, and he shall thereupon give all necessary releases and receipts; and if upon a sale of the mortgaged premises, the same shall be bid in by the executor or administrator for such debt, he shall be seized of the same, for the same persons, whether creditors, next of kin or others, who would have been entitled to the money, if the premises had been redeemed or purchased at such sale by some other person.

Real estate purchased by executor, may be sold under license.

SEC. 14. Any real estate so held by an executor or administrator, or which may be purchased by him as such upon a sale on execution for the recovery of a debt due the estate, may be sold for the payment of debts or legacies, and the charges of administration, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the probate court in the manner provided by law.

If such land be not sold, how assigned and distributed.

SEC. 15. If any land so held by an executor or administrator as mentioned in the preceding section, shall not be sold by him as therein provided, it shall be assigned and distributed to the same persons, and in the same proportions as if it had been part of the personal estate of the deceased; and if, upon such distribution, the estate shall come to two or more persons, partition thereof may be made between them, in like manner as if if were real estate which the deceased held in his life time.

When suit to be prosecuted to recover lands, &c., fraudulently conveyed by deceased.

SEC. 16. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall, in his life time, have conveyed any real estate, or any right or interest therein, with the intent to defraud his creditors, or to avoid any right, debt or duty of any person, or shall have so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment, any proper action or suit, at law or in chancery, for the recovery of the same, and may recover, for the benefit of the creditors, all such real estate so fraudulently conveyed; and may also, for the benefit of the creditors, sue and recover for all goods, chattels, rights or credits which may have been so fraudulently conveyed by the deceased in his life time, whatever may have been the manner of such fraudulent conveyance.

Executors, &c., not bound to

SEC. 17. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section, for the benefit of prosecute except on application of creditors, &c.

the creditors, unless on application of creditors of the deceased, nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator therefor, as the probate court shall judge just and equitable.

Disposition of estate recovered.

SEC. 18. All real estate so recovered as provided in the sixteenth section of this chapter, shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the probate court, and the proceeds of all goods, chattels, rights and credits recovered as aforesaid, shall be appropriated in payment of the debts of the deceased, in the same manner as other assets in the hands of the executor or administrator.

CHAPTER 70.

OF THE PAYMENT OF DEBTS AND LEGACIES OF DECEASED PERSONS.

Commissioners to examine and adjust claims, when to be appointed.

SECTION 1. When letters testamentary or of administration shall be granted by any probate court, it shall be the duty of such court to appoint two or more suitable persons to be commissioners, to receive, examine and adjust all claims and demands of all persons against the deceased, except in the following cases:

1. When it shall appear that there are no debts existing against such deceased person:

2. When the value of the whole estate, exclusive of the furniture and other personal property, allowed to the widow, shall not exceed one hundred and fifty dollars, and shall be assigned for the support of the widow and children, as provided by law; in which case, such assignment shall be deemed a full and final administration, and bar to all claims against the estate.

Commissioners to appoint time and place of meeting, and to give notice.

SEC. 2. When such commissioners shall be appointed, it shall be their duty to appoint convenient times and places, when and where they will meet for the purpose of examining and allowing the claims; and within sixty days after their appointment, they shall give notice of the times and places of their meeting, and of the time limited for creditors to present their claims, by posting a notice thereof in four public places in the same county, and by publishing the same at least four weeks successively in some newspaper printed in this state, or in any other manner which the court may direct.

Judge of probate to designate paper in which notice to be published, &c.

SEC. 3. The judge of probate, in the commission issued to the commissioners, shall designate the paper in which such notice shall be published, and the number of places in the several towns in which it shall be required to be posted, or other mode of notifying which he may deem necessary and proper.

When commissioner shall die,

SEC. 4. If any commissioner, appointed by the probate court, shall at any time die, remove out of the state, refuse, or become in

&c., court to appoint another in his place.

any other way incapacitated to perform the duties of his appointment, the court may appoint another commissioner in his place; and no further notice of the meetings of the commissioners shall be required, in consequence of such appointment.

Time allowed for presenting claims.

SEC. 5. The probate court shall allow such time as the circumstances of the case shall require, for the creditors to present their claims to the commissioners for examination and allowance, which time shall not, in the first instance, exceed eighteen months, nor be less than six months; and the time allowed shall be stated in the commission.

Time may be extended, not exceeding two years.

SEC. 6. The probate court may extend the time allowed to creditors to present their claims, as the circumstances of the case may require; but not so that the whole time shall exceed two years from the time of appointing such commissioners.

When commission may be renewed, and further time allowed, &c.

SEC. 7. On the application of a creditor who has failed to present his claim, if made within six months from the time previously limited, the court may, for good cause shown, renew the commission, and allow further time, not exceeding three months, for the commissioners to examine such claim; in which case the commissioners shall personally notify the parties of the time and place of hearing, and, as soon as may be, make return of their doings to the probate court.

When court may examine and adjust claim.

SEC. 8. In the case mentioned in the preceding section, if the judge of probate shall think proper, instead of renewing the commission, he may appoint a time and place for examination and adjustment of such claim, before himself, and cause personal notice thereof to be given to the parties; and in that case, he shall proceed to examine and adjust such claim, in like manner as the same might have been done by such commissioners.

Set-offs; claims barred, not to be allowed.

SEC. 9. When a creditor against whom the deceased had claims, shall present a claim to the commissioners, the executor or administrator shall exhibit the claims of the deceased in offset to the claims of the creditor, and the commissioners shall ascertain and allow the balance against or in favor of the estate, as they shall find the same to be; but no claim barred by the statute of limitations, shall be allowed by the commissioners in favor of or against the estate, as a set-off or otherwise.

Commissioners to be sworn, and may administer oaths.

SEC. 10. The commissioners shall be sworn to the faithful discharge of their duties, and any one of them shall be authorized to administer oaths to parties and witnesses, when the same shall be required or proper for the investigation and trial of questions before them.

Report of commissioners.

SEC. 11. At the expiration of the time limited, or as soon thereafter as they shall have time to complete the hearing of the claims presented, the commissioners shall make a report of their doings to the probate court, embracing lists of the claims presented, or exhibited in offset, and stating how much was allowed, and how much disallowed, together with the final balance, whether in favor of the creditor or the estate; and the report shall state particularly the manner of giving notice to the claimants.

What claims commissioners may try and decide, &c.

SEC. 12. The commissioners shall have power to try and decide upon all claims, which by law survive against or in favor of executors and administrators, except claims for the possession or title of real estate; and may examine and allow all demands, at their then present value, which may be payable at a future day, including claims payable in specific articles, and may offset such demands in the same manner in favor of the estate.

Debts payable at a future day.

Sec. 13. Nothing in the preceding section shall be construed to prevent any executor or administrator from paying any debt which shall be payable at a future day according to the terms and at the time specified in the contract.

Persons failing to present claims, to be barred.

Sec. 14. Every person having a claim against a deceased person, proper to be allowed by the commissioners, who shall not, after the publication of notice as required in the second section of this chapter, exhibit his claim to the commissioners within the time limited by the court for that purpose, shall be forever barred from recovering such demand, or from setting off the same in any action whatever.

No suit to be commenced against executor or administrator, except ejectment, &c., until, &c.

Sec. 15. When commissioners shall be appointed, as provided in this chapter, for examining and allowing claims against any estate, no action shall be commenced against the executor or administrator, except actions of ejectment, or other actions to recover the seizin or possession of real estate, and actions of replevin; nor shall any attachment or execution be issued against the estate of the deceased, until the expiration of the time limited by the court for the payment of debts.

When actions pending, to be prosecuted to judgment, and judgment to be certified, &c.

Sec. 16. All actions and suits which may be pending against a deceased person at the time of his death, may, if the cause of action survives, be prosecuted to final judgment, and the executor or administrator may be admitted to defend the same, and if judgment shall be rendered against the executor or administrator, the court rendering it shall certify the same to the probate court, and the amount thereof shall be paid in the same manner as other claims duly allowed against the estate.

Executor or administrator not prevented from bringing suits.

Sec. 17. Nothing in this chapter shall be construed to prevent an executor or administrator, when he shall think it necessary, from commencing and prosecuting any action against any other person, or from prosecuting any action commenced by the deceased in his lifetime, for the recovery of any debt or claim, to final judgment, or from having execution on any judgment.

Set-offs in suits by executors, &c.

Sec. 18. In such case, the defendant may set off any claim he may have against the deceased, instead of presenting it to the commissioners, and all mutual claims may be set off in such action; and if final judgment shall be rendered in favor of the defendant, the same shall be certified by the court rendering it, to the probate court, and the judgment shall be considered the true balance.

Estate of deceased liable on joint contract, &c.

Sec. 19. When two or more persons shall be indebted on any joint contract, or upon a judgment founded on a joint contract, and either of them shall die, his estate shall be liable therefor, and it may be allowed by the commissioners, as if the contract had been joint and several, or as if the judgment had been against him alone, and the other parties to such joint contract may be compelled to contribute or to pay the same, if they would have been liable to do so upon payment thereof by the deceased.

Of Appeals from the Decision of Commissioners.

Appeal, how made.

SEC. 20. Any executor, administrator, or creditor, may appeal from the decision and report of the commissioners, to the circuit court for the same county, if application for such appeal be made in writing, filed in the probate office within sixty days after the returning of the report of the commissioners.

Bond to be given by claimant on appeal.

SEC. 21. In case of an appeal by a claimant against the estate, he shall, within the time aforesaid, and before such appeal shall be allowed, give a bond to the adverse party, with sufficient surety, to be approved by the judge of probate and filed in his office, with a condition that he shall prosecute his appeal to effect, and pay all damages and costs which may be awarded against him on such appeal.

Cases in which appeal may be allowed.

SEC. 22. No appeal shall be allowed from the decision and report of the commissioners, except in the following cases:

1. When such commissioners shall disallow any claim in favor of any creditor, or of the estate, in whole or in part, to the amount of twenty dollars:

2. When the commissioners shall allow any claim, in whole or in part, and the sum allowed, being objected to, shall amount to twenty dollars; in either of which cases the aggrieved party may appeal.

Notice of appeal and of hearing.

SEC. 23. In all cases of appeal from the decision of the commissioners, the person appealing shall give notice of such appeal, and of the hearing thereof in the circuit court, in such manner as the judge of probate shall direct, at least twelve days before the next term thereof after the appeal is allowed, if there shall be so many days; and if not, as soon as may be.

Party appealing to procure and file copy of record.

SEC. 24. The party appealing shall procure and file in the circuit court to which the appeal is taken, at or before the next term of such court after the appeal is allowed, a certified copy of the record of the allowance or disallowance appealed from, of the application for the appeal and the allowance of the same, together with the proper evidence that notice has been given to the adverse party according to the order of the probate court.

Trial of appeal.

SEC. 25. When such certified copy shall have been filed in the circuit court, such court shall proceed to the trial and determination of the same according to the rules of law, allowing a trial by jury of all questions of fact in cases where such trial may be proper; and such court may direct an issue to be made up between the parties in a brief form when it shall be deemed necessary; and questions of law may be carried to the supreme court, and costs may be allowed or denied, in the discretion of the court.

Judgment to be certified to probate court, &c.

SEC. 26. The final decision and judgment in cases so appealed, shall be certified by the circuit court, or supreme court, as the case may be, to the probate court; and the same proceedings shall be had thereon as if such decision had been reported by the commissioners.

If appeal not prosecuted, claim barred.

SEC 27. If any claimant, appealing on account of the disallowance of his claim by the commissioners, shall fail to prosecute his appeal in the circuit court to which the appeal is taken, such claim shall be forever barred, and said court may allow costs to the appellee.

When circuit court shall affirm allowance appealed from.

SEC. 28. If the person objecting to a claim, and appealing on account of the allowance of such claim, shall neglect to prosecute his appeal, the court to which the appeal shall be taken, on motion of the adverse party, and on his producing an attested copy of the record of the probate court showing such appeal, shall affirm the allowance appealed from, and may allow costs against the appellant.

When any person interested in estate may appeal, &c.

SEC. 29. When an executor or administrator declines to appeal from the decision of the commissioners, any person interested in the estate, as creditor, devisee, legatee, or heir, may appeal from such decision in the same manner as the executor or administrator might have done, and the same proceedings shall be had in the name of the executor or administrator: Provided, that the person appealing in such case shall, before the appeal shall be allowed, give a bond, to be approved by the judge of probate, as well to secure the estate from damages and costs, as to secure the intervening damages and costs to the adverse party.

Notice in case of appeal by executor, &c., on disallowance of his claim.

SEC. 30. When an executor or administrator shall have a claim against the estate which he represents, which shall be disallowed by the commissioners, and he shall take an appeal therefrom to the circuit court, notice of such appeal shall be given to all concerned, by personal service thereof, or by publication, under an order of the probate court, in some newspaper which circulates in the county, three weeks successively, the last publication of which shall be four weeks before the hearing of the appeal.

Limitation of Time for Paying Debts.

Order allowing time for paying debts, &c.

SEC. 31. The probate court, at the time of granting letters testamentary, or letters of administration, shall make an order allowing to the executor or administrator a time for disposing of the estate and paying the debts and legacies of the deceased person, which time shall not, in the first instance, exceed one year and six months.

Court may extend time.

SEC. 32. The probate court may, on the application of the executor or administrator, from time to time, as the circumstances of the estate may require, extend the time for paying debts and legacies, not exceeding six months at a time, nor so that the whole time allowed to the original executor or administrator shall exceed three years.

Application for extension and notice of hearing.

SEC. 33. When an executor or administrator shall make application to have the time for paying debts and legacies extended beyond one year and six months from the time of granting letters testamentary or of administration, the probate court shall appoint a time for hearing and deciding on such application, and shall cause notice of such application, and of the time and place of hearing, to be given to all persons interested, by publication, three weeks successively, in some newspaper to be designated by the court; and no such order extending the time shall be granted, unless such notice shall have been previously given.

When new administrator appointed, court may extend time, &c.

Sec. 34. When an executor or administrator shall die, or become incapable of discharging his trust, and a new administrator of the same estate shall be appointed, the probate court may extend the time for the payment of the debts and legacies beyond the time allowed to the original executor or administrator, not exceeding one year at a time, and not exceeding six months beyond the time which the court might by law allow to such original executor or administrator, upon due notice given as required in the preceding section.

Of the Distribution of Assets among the Creditors, and of Insolvent Estates.

When executor, &c., to pay debts, &c.

Sec. 35. If, after the report of the commissioners, and ascertaining the claims against any estate, it shall appear that the executor or administrator has in his possession sufficient to pay all the debts, he shall pay the same in full within the time limited or appointed for that purpose.

Order of payment when insufficiency of assets.

Sec. 36. If the assets which the executor or administrator may have received, and which can be appropriated to the payment of debts, shall not be sufficient, he shall after paying the necessary expenses of administration, pay the debts against the estate in the following order: 1. The necessary funeral expenses: 2. The expenses of the last sickness: 3. Debts having a preference by the laws of the United States: 4. Debts due to other creditors.

When creditors to be paid dividend.

Sec. 37. If there shall not be assets enough to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

When court to order payment of debts and distribution of assets.

Sec. 38. After the return of the report of the commissioners, and at or before the expiration of the time limited for the payment of debts, the probate court shall make an order or decree for the payment of the debts, and the distribution of the assets which may have been received by the executor or administrator at the time for that purpose, among the creditors, as the circumstances of the estate shall require, according to the provisions of this chapter.

Court may suspend decree in case of appeal undetermined.

Sec. 39. If an appeal shall have been taken from the decision of the commissioners as provided in this chapter, and shall remain undetermined, the probate court may suspend the decree for the payment of debts mentioned in the preceding section, or may order a distribution among the creditors whose claims shall have been allowed, leaving in the hands of the executor or administrator sufficient assets to pay the claim which may have been disputed and appealed.

When disputed claim ordered to be paid.

Sec. 40. When the disputed claim shall have been finally settled, the probate court shall order the same to be paid out of the assets retained, to the same extent, and in the same proportion as the claims of the other creditors.

Further decree for distribution.

Sec. 41. If the whole of the debts shall not have been paid by the first distribution, and if the whole assets shall not have been distributed, or if other assets shall afterwards come to the hands of the executor or administrator, the probate court may, from time to time, according to the circumstances of the case, make further decree for the distribution of assets.

When executor, &c., personally liable to creditor.

SEC. 42. Whenever a decree shall have been made by the probate court for the distribution of the assets among the creditors, the executor or administrator, after the time of payment shall arrive, shall be personally liable to the creditors for their debts, or the dividend thereon, as for his own debt; or he shall be liable on his bond, and the same may be put in suit, on the application of a creditor whose debt or dividend shall not be paid, as above mentioned.

Notice of time limited for payment of debts may be given.

SEC. 43. When the time for paying the debts of a deceased person shall be finally limited by order of the probate court, or by the expiration of the time allowed for that purpose, whether the estate shall be insolvent or not, the probate court may, on the application of the executor or administrator, by an order for that purpose, cause notice to be given to the creditors, of the time appointed or limited for the payment of such debts; which notice shall be given by publishing the same at least three weeks successively, in some newspaper to be designated by the court, or in such other manner as the court may direct.

Creditor neglecting to demand debt in two years to be barred.

SEC. 44. If, after notice shall have been given as provided in the preceding section, any creditor shall neglect to demand from the executor or administrator his debt, or the dividend thereon, within two years from the time so limited for the payment of the debts, or if the notice shall be given after such time, within two years from the last publication, the claim of such creditor shall be forever barred.

Contingent Claims.

Contingent claims may be presented.

SEC. 45. If any person shall be liable as security for the deceased, or have any other contingent claim against his estate, which cannot be proved as a debt before the commissioners, or allowed by them, the same may be presented, with the proper proof to the probate court, or to the commissioners, who shall state the same in their report, if such claim was presented to them.

When court may order sufficient estate retained for payment of claims.

SEC. 46. If the court shall be satisfied from the report of the commissioners, or by the proof exhibited, said court may order the executor or administrator to retain in his hands sufficient estate to pay such contingent claim when the same shall become absolute, or, if the estate shall be insolvent, sufficient to pay a proportion equal to the dividends of the other creditors.

Contingent claim becoming absolute, may be presented, &c.

SEC. 47. If such contingent claim shall become absolute, and shall be presented to the probate court or to the executor or administrator, at any time within two years from the time limited for other creditors to present their claims to the commissioners, it may be allowed by the probate court upon due proof, or it may be proved before the commissioners already appointed, or before others to be appointed for that purpose, in the same manner as if presented for allowance before the commissioners had made their report, and the persons interested shall have the same right of appeal as in other cases.

When claimant entitled to payment.

SEC. 48. If such contingent claim shall be allowed, as mentioned in the preceding section, or established on appeal, the creditor shall be entitled to receive payment to the same extent as other creditors, if the estate retained by the executor or administrator shall be sufficient for that purpose; but, if the claim shall not be finally established as provided in the preceding section, or if the assets retained in the hands of the executor or administrator, shall not be wholly exhausted in the payment of such claims, such assets, or the residue of them, shall be disposed of by order of the probate court, to the persons entitled to the same according to law.

Claim accruing after time limited for presenting claims, may be presented to probate court, &c.

SEC. 49. If the claim of any person shall accrue or become absolute, at any time after the time limited for creditors to present their claims, the person having such claim may present it to the probate court and prove the same at any time within one year after it shall accrue or become absolute, and if established in the manner provided in this chapter, the executor or administrator shall be required to pay it, if he shall have sufficient assets for that purpose, and shall be required to pay such part as he shall have assets to pay : and if real or personal estate shall afterwards come to his possession, he shall be required to pay such claim, or such part as he may have assets sufficient to pay, not exceeding the proportion of the other creditors, in such time as the probate court may precribe.

When creditor may recover such claim of heirs, &c.

SEC. 50. When a claim shall be presented within one year from the time when it shall accrue, and be established, as mentioned in the preceding section, and the executor or administrator shall not have sufficient to pay the whole of such claim, the creditor shall have a right to recover such part of his claim as the executor or administrator has not assets to pay, against the heirs, devisees, or legatees, who shall have received sufficient real and personal property from the estate.

Defence by executor, &c, to action

SEC. 51. If an action shall be commenced against an executor or administrator on such claim, as is mentioned in the preceding forty-ninth section, and for the payment of which sufficient assets shall not have been retained, as before provided in this chapter, the executor or administrator may give notice under his plea to such action, that he has fully administered the estate which has come to his possession or knowledge.

When defendant discharged, &c.

SEC. 52. If it shall appear on the trial of such action that the defendant had fully administered at the time the claim was presented, and had no assets which could be lawfully appropriated for that purpose, he shall be discharged, and shall have judgment for his costs; but if it shall be found that he had assets sufficient to pay only a part of such claim, judgment shall be rendered against him for such sum only, as shall be equal to the amount of assets in his hands.

To what extent heirs liable.

SEC. 53. When the heirs, devisees or legatees, shall have received real or personal estate, and shall be liable for any debts as mentioned in this chapter, they shall be liable in proportion to the estate they may have respectively received; and the creditor may have any proper action or suit in law or equity, and shall have a right to recover his claim against a part or all of such heirs, devisees or legatees, to the amount of the estate they may have respectively received, but no such action shall be maintained, unless commenced within one year from the time the claim shall be allowed or established.

Contribution, &c.

SEC. 54. If by the will of the deceased, any part of his estate, or any devisees or legatees shall be made exclusively liable for the debt, the devisees or legatees shall be liable to contribute among themselves only according to the will.

When all persons liable, not included in suit, others may be brought in.

SEC. 55. If all the persons liable for the payment of any such debt, shall not be included in the action or suit as defendants, the suit or action shall not thereby be in any way dismissed or barred; but the court before which it shall be pending may order any other parties brought in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

Proceeding in chancery against persons liable.

SEC. 56. If more than one person shall be liable as aforesaid, and the creditor shall bring a suit in chancery against all or a part of the persons so liable, and the persons liable shall dispute the debt or the amount claimed, the court of chancery may order an issue to be formed, and direct that the amount may be ascertained by a jury in the circuit court of the county in which the estate is settled; and the court of chancery shall ascertain and determine how much each is liable to pay, and may award execution therefor.

When estate of deceased heir, &c., liable

SEC. 57. If any of the heirs, devisees or legatees, shall die without having paid his just share of the debts, his estate shall be liable therefor, as for his own debt, to the extent to which he would have been liable if living.

Contribution.

SEC. 58. When any of the heirs, devisees or legatees, shall pay more than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same, as is provided in the case of devisees and legatees in the preceding chapter.

If appointment of commissioners omitted, claimants not preventing from suing, &c.

SEC. 59. If the appointment of commissioners to allow claims, shall in any case be omitted, no person, having any contingent or other lawful claim against a deceased person, shall thereby be prevented from prosecuting the same against the executor, administrator, heirs, devisees or legatees, as provided by law, and in such case a claimant having a lien upon real or personal estate of the deceased, by attachment previous to his death, may, on obtaining judgment, have execution against such real or personal estate.

No action to be prosecuted against executors &c., except as provided in this chapter.

SEC. 60. In no other case, except such as are expressly provided for in this chapter, shall any action be commenced or prosecuted against an executor or administrator; nor shall any writ of attachment or execution issue against such executor or administrator, or against the estate of the deceased in his hands, during the time allowed him for the payment of debts, except in the case provided for in the preceding section.

CHAPTER 71.

OF RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

With what executor, &c., chargeable.

SECTION 1. Every executor and administrator shall be chargeable in his account, with the whole of the goods, chattels, rights, and credits of the deceased, which may come to his possession; also, with all the proceeds of the real estate, which may be sold for the payment of debts and legacies, and with all the interest, profit and income which shall in any way come to his hands from the estate of the deceased.

To account for personal estate at appraisal.

SEC. 2. Every executor and administrator shall account for the personal estate of the deceased, as the same shall be appraised, except as provided in the following sections.

Not to profit by increase or lose by decrease or destruction, &c., without his fault.

SEC. 3. An executor or administrator shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the personal estate; and he shall account for the excess, when he shall sell any part of the personal estate for more than the appraisal, and if he shall sell any for less than the appraisal, he shall not be responsible for the loss, if it shall appear to be beneficial to the estate to sell it.

When sale of personal estate may be ordered.

SEC. 4. The probate court, on the application of the executor or administrator, may, at any time, order the personal estate to be sold at private sale or at public auction, when it shall appear to be necessary for the purpose of paying debts, or legacies, or expenses of administration, or for the preservation of the property, or when it shall be requested by all the heirs residing in this state; or the court may order such personal estate to be sold, either at private sale or public auction, as the executor or administrator may find most beneficial. If the order be to sell at auction, the probate court shall direct the mode of giving notice of the time and place of sale.

Executor &c., to account for proceeds of sale.

SEC. 5. When the executor or administrator shall sell personal estate, under an order of the probate court, he shall account for the same at the price for which it shall be sold.

When not accountable for debts due deceased.

SEC. 6. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

To account for income of real estate.

SEC. 7. The executor or administrator shall also be accountable for the income of the real estate while it shall remain in his possession; and if he shall use or occupy any part of it, he shall account for it as may be agreed upon between him and the parties interested, or adjudged by the probate court, with their assent; and if the parties shall not agree upon the sum to be allowed, the same may be ascertained by one or more disinterested persons to be appointed by the probate court, whose award, being accepted by such court, shall be final.

Executor, &c., accountable for loss occasioned by neglect.

SEC. 8. When an executor or administrator shall neglect or unreasonably delay to raise money, by collecting the debts or selling the real or personal estate of the deceased, or shall neglect to pay over the money he shall have in his hands, and the value of the estate shall thereby be lessened, or unnecessary cost or interest shall accrue, or the persons interested shall suffer loss, the same shall be deemed waste, and the damages sustained may be charged against the executor or administrator in his account, or he shall be liable therefor on his administration bond.

Accounts, when to be rendered.

SEC. 9. Every executor or administrator shall render his account of his administration within one year from the time of his receiving letters testamentary or of administration, unless the court shall give permission to delay, in consideration that the time for selling the estate and paying the debts shall be extended; and he shall render such further accounts of his administration from time to time, as shall be required by the court, until the estate shall be wholly settled; and he may be examined on oath upon any matter relating to his account.

Compensation, &c., to executors and administrators.

SEC. 10. The executor or administrator shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services, such fees as the law provides, together with all extra expenses, provided, that when the deceased shall, by his will, make some other provision for compensation to his executor, that shall be deemed a full compensation for his services, unless he shall, by a written instrument filed in the probate court, renounce all claim to the compensation provided by the will.

Ib.

SEC. 11. When no such compensation shall be provided by the will, or the executor shall renounce all claim thereto, he shall be allowed commissions upon the amount of personal estate collected and accounted for by him, and of the proceeds of real estate sold under an order of the court for the payment of debts, as follows: For the first thousand dollars, at the rate of five per cent; for all above that sum and not exceeding five thousand dollars, at the rate of two and one-half per cent; and for all above five thousand dollars, at the rate of one per cent; and the same commissions shall be allowed to administrators; and in all cases, such further allowances may be made as the judge of probate shall deem just and reasonable, for any extraordinary services, not required of an executor or administrator in the common course of his duty.

Bond may be put in suit, on neglect to render account.

SEC. 12. When an executor or administrator, after being duly cited by the probate court, shall neglect to render his account, he shall be liable on his bond for all damages which may accrue, and his bond may be put in suit by any person interested in the estate.

Execution for costs, when awarded against executor, &c.

SEC. 13. When costs, in any case, are allowed against an executor or administrator, execution shall not issue against the estate of the deceased in his hands therefor, but shall be awarded against him as for his own debt; and the amount paid by him shall be allowed in his administration account, unless it shall appear that the suit or proceeding in which the cost shall be taxed, shall have been prosecuted or resisted without just cause.

Notice of examining accounts of executors and administrators.

SEC. 14. Before the administration account of any executor or administrator shall be allowed, notice shall be given to all persons interested, of the time and place of examining and allowing the same; and such notice may be given personally, to such persons as the probate court shall judge to be interested, or by public notice, under the direction of the court.

CHAPTER 72.

OF THE PARTITION AND DISTRIBUTION OF ESTATES.

Provision for children under seven years of age.

SECTION 1. Before any partition or division of any estate among the heirs, devisees, or legatees, an allowance shall be made for the necessary expenses of the support of the children of the deceased, under seven years of age; and the probate court may order the executor or administrator to retain in his hands sufficient estate for that purpose; except where some provision shall have been made by will for their support.

After payment of debts, &c., residue to be assigned to persons entitled thereto.

SEC. 2. After the payment of the debts, funeral charges, and expenses of administration, and after the allowances made for the expense of the maintenance of the family of the deceased, and for the support of the children, under seven years of age, and after the assignment to the widow of her dower and of her share in the personal estate, or when sufficient effects shall be reserved in the hands of the executor or administrator for the above purposes, the probate court shall, by a decree for that purpose, assign the residue of the estate, if any, to such other persons as are by law entitled to the same.

Decree, what to specify, &c.

SEC. 3. In such decree, the court shall name the persons, and the proportions or parts to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same.

No person entitled to share of estate until debts, &c., paid, unless bond be given

SEC. 4. Such decree may be made on the application of the executor or administrator, or of any person interested in the estate, but no heir, devisee, or legatee shall be entitled to a decree for his share, until payment of the debts, and allowances and expenses mentioned in the preceding section shall have been made or provided for, unless he shall give a bond to the judge of probate, with such surety or sureties as the court may direct, to secure the payment of his just proportion of such debts and expenses, or such part thereof, as shall remain unprovided for, and to indemnify the executor or administrator against the same.

When and how partition may be made.

SEC. 5. When the estate, real or personal, assigned to two or more heirs, devisees or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three discreet and disinterested persons, to be appointed commissioners for that purpose by the probate court, who shall be duly sworn to the faithful discharge of their duties before the judge of probate or a justice of the peace, and the judge of probate shall issue a warrant to them for that purpose.

Proceedings when real estate lies in different counties.

SEC. 6. If the real estate shall lie in different counties, the probate court may, if it shall be judged proper, appoint different commissioners for each county, and in such case, the estate in each county shall be divided separately, as if there was no other estate to be divided; but the commissioners first appointed shall, unless otherwise directed by the probate court, make division of such real estate, wherever situated within this state.

Notice of application for partition.

SEC. 7. Such partition and distribution may be ordered on the petition of any of the persons interested; but before any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested, who reside in this state, or their guardians, and to the agents, attorneys or guardians, if there be any in this state, of such as reside out of the state, either personally or by public notice, as the probate court shall direct.

Partion when shares have been conveyed.

SEC. 8. Partition of the real estate may be made, as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be set to the persons holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

Shares, how set out.

SEC. 9. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished; unless any two or more of the parties interested shall consent to have their shares set out, so as to be held by them in common and undivided.

When estate can not be divided, court may assign the whole to one of parties.

SEC. 10. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein, who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger, provided, the party so accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or shall secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners appointed by the probate court and sworn for that purpose.

When tract of greater value than either party's share, and cannot be divided, may be set off to one of parties.

SEC. 11. When any tract of land, messuage, or tenement, shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding section, provided the party so accepting it shall pay or secure to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court, until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

When estate of deceased lies in common to be first severed.

SEC. 12. When partition of real estate among heirs or devisees shall be required, or dower is to be assigned to a widow in the same, and such real estate shall be in common and undivided with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common, and such division so made, and established by the probate court, shall be binding on all the persons interested.

Guardians to be appointed for minors, &c., and agents for nonresidents.

SEC. 13. Before any partition shall be made, or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as shall reside out of the state; and notice of the appointment of such agents shall be given to the commissioners in their warrant; and notice shall be given to all the persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

Report of commissioners and proceedings thereon.

SEC. 14. The commissioners shall make report of their proceedings to the probate court in writing; and the court may, for sufficient reasons, set aside such report, and commit the same to the same commissioners, or appoint others; and the report, when finally accepted and established, shall be recorded in the records of the probate court; and a copy thereof, attested by the judge of probate, under the seal of the court, shall be recorded in the office of the register of deeds of the county where the lands lie.

When partition may be dispensed with.

SEC. 15. When the probate court shall make a decree, assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them, shall request that such partition be made.

Questions relating to advancement, how determined.

SEC. 16. All questions as to advancements made or alleged to be made by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners; and the final decree of the probate court, or, in case of appeal, of the circuit or supreme court, shall be binding on all persons interested in the estate.

Appeal.

SEC. 17. Any person aggrieved by any order, decree or denial of a probate court, in pursuance of the provisions of this chapter, may appeal therefrom as provided in other cases.

Partition when conclusive.

SEC. 18. The partition, when finally confirmed and established, shall be conclusive on all the heirs, and devisees, and all persons claiming under them, and upon all persons interested.

When executor, &c., may pay expenses of partition.

SEC. 19. If, at the time of the partition or distribution of any estate, as provided in this chapter, the executor or administrator shall have retained sufficient effects in his hands, which may lawfully be applied for that purpose, the expenses of such partition or distribution may be paid by such executor or administrator, when it shall appear to the court just and equitable, and not inconsistent with the intention of the testator.

When expenses to be paid by parties interested.

SEC. 20. But if there are no effects in the hands of the executor or administrator which may be lawfully applied to that purpose, the expenses and charges of the partition, being ascertained by the probate court, shall be paid by all the parties interested in the the partition, in proportion to their respective shares or interests in the premises; and the proportions shall be settled and allowed by the probate court; and if any one shall neglect to pay the sum assessed on him by the court, an execution may be issued therefor against him by such court, in favor of the persons entitled to the same.

When partition of reversion may be made.

SEC. 21. When the term of a widow, entitled to dower, or other life estate, in the lands of a deceased person, shall expire, the reversion may be assigned to the persons entitled to the same, and partition thereof be made, in the manner prescribed in this chapter in relation to other estates of deceased persons.

SEC. 22. When any estate shall be assigned by decree of the court, or be distributed by commissioners, as provided in this chapter, to any person residing out of this state, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution.

When court may appoint agent to take charge of estate for non-resident.

SEC. 23. Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Agent to give bond, and court may allow for his services, &c.

CHAPTER 73.

OF PROBATE BONDS AND THE PROSECUTION OF THEM.

SECTION 1. All bonds, required by law to be taken in or by order of the probate court, shall be for such sum and with such sureties as the judge of probate shall direct, except when the law otherwise prescribes; and such bonds shall be for the security and benefit of all persons interested, and shall be taken to the judge of probate, except where they are required by law to be taken to the adverse party.

Probate bonds, how taken.

SEC. 2. A suit may be brought on the bond of any executor or administrator by any creditor, when the amount due to him has been ascertained and ordered by the decree of distribution to be paid, if the executor or administrator shall neglect to pay the same when demanded.

When suit may be brought by creditor on bond of executor.

SEC. 3. Such a suit may be brought by any person as next of kin to recover his share of the personal estate, after a decree of the probate court declaring the amount due to him, if the executor or administrator shall fail to pay the same when demanded.

When suit may be brought by next of kin.

SEC. 4. When it shall appear, on the representation of any person interested in the estate, that the executor or administrator has failed to perform his duty in any other particular than those before specified, the judge of probate may authorize any creditor, next of kin, legatee or other person aggrieved by such mal-administration, to bring an action on the bond.

When court may authorize any person interested to bring suit.

SEC. 5. Whenever an executor or administrator shall refuse or omit to perform any order or decree made by a judge of probate having jurisdiction, for rendering an account, or upon a final settlement, or for the payment of debts, legacies, or distributive shares, such judge of probate may cause the bond of such executor or administrator to be prosecuted, and the moneys collected thereon

When executor &c., shall refuse, to perform order court may cause bond to be prosecuted.

shall be applied in satisfaction of such order or decree, in the same manner as such moneys ought to have been applied by such executor or administrator.

Suits on such bonds to be in the name of judge of probate, and execution how to issue.

Sec. 6. In all suits upon such bonds, the writ and proceedings shall be in the name of the judge of probate, and when the action is brought for the benefit of any particular person as creditor, next of kin, or legatee, as provided in this chapter the execution shall express that it is for the use of such creditor, next of kin or legatee, and in such case, the person for whose use the action is brought, shall be deemed the plaintiff.

When judge may grant permission to sue bond.

Sec. 7. On the application of any person authorized by this chapter to commence a suit on such bond, the judge of probate may grant permission to such person to prosecute the same, and shall thereupon furnish to the applicant, on his paying the legal fees, a certified copy of the bond, together with a certificate that permission has been granted to prosecute it, and the name and residence of the applicant.

Judgment in suit for benefit of particular persons.

Sec. 8. If judgment shall be rendered for the plaintiff in any suit upon such bond, brought for the benefit of any particular person, the court shall award execution for the amount due to such person, with costs of suit.

Judgment, &c., in other cases.

Sec. 9. If judgment shall be rendered for the plaintiff in any suit upon such bond brought by the judge of probate for any breach thereof, in not performing any order or decree of the judge of probate, as mentioned in the fifth section of this chapter, execution shall be awarded for the full value of all the estate of the deceased that shall have come to the hands of such executor or administrator, and for which he shall not have satisfactorily accounted, and for all such damages as shall have been occasioned by his neglect or mal-administration, with costs of suit.

Disposition of moneys collected.

Sec. 10. All moneys received on any execution issued on a judgment in favor of the judge of probate as mentioned in the preceding section, shall be paid over to the co-executor or co-administrator, if there be any, or to such person, other than the defendant therein, as shall then be the rightful executor or administrator, and such moneys shall be assets in his hands to be administered according to law.

When scire facias may be prosecuted, &c.

Sec. 11. Any person who may be injured by the breach of the conditions of such bond, may afterwards, from time to time, sue out and prosecute a scire facias in his own name, on the judgment which may have been rendered for the penalty of such bond; and in such scire facias, shall assign and set forth the breaches on which he relies, and may therein recover such damages as he may prove, with costs.

By whom claims for damages for breach of condition may be prosecuted, &c.

Sec. 12. Claims for damages on account of the breach of the conditions of any bond, may be prosecuted by any executor, administrator or guardian, in behalf of those he may represent, in the same manner as by persons living, and of full age, and such claims may be prosecuted against the representatives of deceased persons, in the same manner as other claims against such deceased persons.

CHAPTER 74.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

When court may decree conveyance by executor, &c.

Section 1. When any person who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the probate court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to execute such conveyance.

Notice of petition and hearing.

Sec. 2. On the presentation of a petition by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the judge of probate shall appoint a time and place for hearing such petition, and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least six successive weeks before such hearing, in such newspaper or newspapers in this state as he may deem necessary.

Examination of petitioner, &c.

Sec. 3. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear before the probate court and defend against such petition; and the court may examine on oath the petitioner, and all others who may be produced before him for that purpose.

When decree for conveyance to be made.

Sec. 4. After a full hearing upon such petition, and examination of the facts and circumstances of such claim, if the judge of probate shall be satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, according to the provisions of this chapter, he shall thereupon make a decree, authorizing and directing the executor or administrator to make and execute a conveyance thereof to such petitioner.

Appeal from decree; executing conveyance, &c.

Sec. 5. Any person interested may appeal from such decree to the circuit court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the direction contained in such decree, and a certified copy of the decree shall be recorded with the deed, in the office of the register of deeds in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

When petition to be dismissed, &c.

Sec. 6. If, upon a hearing in the probate court as herein before provided, the judge of probate shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petition without prejudice to the rights of the petitioner, who may at any time thereafter have a bill in chancery to enforce a specific performance of the contract, as hereinafter provided.

Bills in chancery for specific performance by heirs &c.

Sec. 7. Whenever any person who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the person entitled thereto may have a bill in the court of chancery, to enforce a specific performance of the contract by his heirs, devisees, or the executor or administrator of the deceased party who made such contract.

Decree in chancery.

Sec. 8. The court of chancery shall hear and determine every such case brought in said court, according to the course of proceedings in chancery, and shall make such decree therein as justice and equity shall require.

Who to be authorized to make conveyance.

Sec. 9. If it shall appear that the complainant is entitled to have a conveyance, the court may authorize and require the executor or administrator of the deceased party to convey the estate in like manner as the deceased party might and ought to have done, if living; and if the heirs or devisees of such deceased person, or any of them, shall be within this state, and competent to act, the court may require them, or either of them, instead of the executor or administrator, to convey the estate in the manner before mentioned, or may require them, or either of them, to join in such conveyance with the executor or administrator.

Effect of conveyance.

Sec. 10. Every conveyance made in pursuance of a decree of the probate court or the court of chancery, as provided in this chapter, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself was still living, and then executed the conveyance.

Certified copy of decree may be recorded; effect of record.

Sec. 11. A copy of the decree for a conveyance made by the probate court, and duly certified and recorded in the registry of deeds in the county where the lands lie, or a copy of the decree of the court of chancery for that purpose, duly certified by the register of said court and recorded as aforesaid, shall give the person entitled to such conveyance, a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Decree may be enforced by process

Sec. 12. The recording of any decree as provided in the preceding section, shall not prevent the court making such decree from enforcing the same by any proper process, according to the course of proceedings therein.

In case of death of person entitled, his heirs, &c., may commence or prosecute proceedings, &c.

Sec. 13. If the person to whom the conveyance was to be made, shall die before the commencement of proceedings according to the provisions of this chapter, or before the conveyance is completed, any person who would have been entitled to the estate under him as heir, devisee or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or may prosecute the same if already commenced; and the conveyance shall thereupon be so made as to vest the estate in the same persons who would have been so entitled to it, or in the executor or administrator for their benefit.

TITLE XX.

OF FRAUDULENT CONVEYANCES AND CONTRACTS RELATIVE TO REAL AND PERSONAL PROPERTY.

CHAPTER 75. Of fraudulent conveyances and contracts relative to lands.
76. Of fradulent conveyances and contracts relative to goods, chattels and things in action.
77. General provisions relating to fraudulent conveyances and contracts.

CHAPTER 75.

OF FRAUDULENT CONVEYANCES AND CONTRACTS RELATIVE TO LANDS.

Fraudulent conveyances void.

SECTION 1. Every conveyance of any estate or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration, of the same lands, rents or profits, as against such purchasers, shall be void.

What not deemed a fraudulent conveyance.

SEC. 2. No such conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser, who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

Conveyance, &c., containing power of revocation, void.

SEC. 3. Every conveyance or charge of, or upon, any estate or interest in lands, containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from such grantor for a valuable consideration, of any estate or interest so liable to be revoked, or determined, although the same be not expressly revoked, determined or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

Conveyance executed by person to whom revocation given, valid.

SEC. 4. Where a power to revoke a conveyance of any lands, or the rents and profits thereof, and to re-convey the same, shall be given to any person, other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid, in the same manner and to the same extent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

Ib.

SEC. 5. If a conveyance to a purchaser, under either of the two last preceding sections, shall be made, before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid, from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

Conveyance, &c, of land, to be in writing.

SEC. 6. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing.

Limitation of preceding section.

SEC. 7. The preceding section shall not be construed to affect in any manner, the power of a testator, in the disposition of his real estate, by a last will and testament; nor to prevent any trust from arising or being extinguished, by implication or operation of law.

Contracts for sale, and leases for more than one year void, unless in writing.

SEC. 8. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

Agent may sign instrument.

SEC. 9. Every instrument required to be subscribed by any party, under the last preceding section, may be subscribed by the agent of such party, lawfully authorized.

Powers of courts of equity not abridged.

SEC. 10. Nothing in this chapter contained shall be construed to abridge the powers of courts of equity, to compel the specific performance of agreements in cases of part performance of such agreements.

CHAPTER 76.

OF FRAUDULENT CONVEYANCES AND CONTRACTS, RELATIVE TO GOODS, CHATTELS, AND THINGS IN ACTION.

Conveyances of personal property, when void.

SECTION 1. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors existing, or subsequent of such person.

What agreements void unless in writing.

SEC. 2. In the following cases, every agreement shall be void, unless such agreement, or some note or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party charged therewith:

1. Every agreement that by the terms is not to be performed within one year from the making thereof:

2. Every special promise to answer for the debt, default, or miscarriage of another person:

3. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry.

Contracts for sale of goods over $50, how made to be valid.

SEC. 3. Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or more, shall be void, unless,

1. A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or

2. Unless the buyer shall accept and receive part of such goods, or the evidences, or some of them, of such things in action; or

3. Unless the buyer shall, at the time, pay some part of the purchase money.

Memorandum of auctioneer to be deemed note of contract.

SEC. 4. Whenever goods shall be sold at public auction, and the auctioneer shall at the time of sale, enter in a sale-book, a memorandum, specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person for whose account the sale is made, such memorandum shall be deemed a note of the contract of sale within the meaning of the last section.

Sale deemed fraudulent unless vendee takes possession.

SEC. 5. Every sale made by a vendor, of goods and chattels in his possession, or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession, of the things sold, or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith; and shall be conclusive evidence of fraud, unless it shall be made to appear, on the part of the persons claiming under such sale or assignment, that the same was made in good faith, and without any intent to defraud such creditors or purchasers.

"Creditors," who to include.

SEC. 6. The term "creditors," as used in the last section, shall be construed to include all persons, who shall be creditors of the vendor or assignor, at any time whilst such goods and chattels shall remain in his possession, or under his control.

Excepted cases.

SEC. 7. Nothing contained in the two last sections, shall be construed to apply to contracts of bottomry or respondentia, nor assignments or hypothecations of vessels or goods, at sea, or in foreign ports, or without this state: Provided, the assignee or mortgagee shall take possession of such ship, vessel, or goods, as soon as may be, after the arrival thereof within this state.

Agent may subscribe instrument.

SEC. 8. Every instrument required by any of the provisions of this title to be subscribed by any party, may be subscribed by the lawful agent of such party.

What mortgage of personal property valid.

SEC. 9. No mortgage of personal property hereafter made shall be valid against any other persons than the parties thereto, unless possession of the mortgaged property be delivered to and retained by the mortgagee, or unless the mortgage be filed in the office of the town clerk where the mortgagor resides; or in case he does not reside in the state, in the town where the property mortgaged may be at the time of executing the same; and such clerk shall indorse thereon the time of receiving the same.

CHAPTER 77.

GENERAL PROVISIONS RELATING TO FRAUDULENT CONVEYANCES AND CONTRACTS.

Conveyances, judgments, &c., to delay creditors, &c, void.

SECTION 1. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay or defraud creditors or other persons, of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed or defrauded, shall be void.

Grants, &c., of trusts to be in writing.

SEC. 2. Every grant or assignment of any existing trust in lands, goods or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent lawfully authorized, shall be void.

Conveyances, void as to creditors, void as to heirs.

SEC. 3. Every conveyance, charge, instrument or proceeding declared to be void, by the provisions of this title, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives, or assignees, of such creditors or purchasers.

Intention to defraud, to be question of fact, &c.

SEC. 4. The question of fraudulent intent in all cases arising under the provisions of this title, shall be deemed a question of fact, and not of law; nor shall any conveyance or charge be adjudged fraudulent as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

When purchaser without notice, protected.

SEC. 5. The provisions of this title shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

What "lands," &c, to include.

SEC. 6. The term "lands," as used in this title, shall be construed as co-extensive in meaning, with "lands, tenements, and hereditaments;" and the terms "estate and interest in lands," shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in lands as above defined,

What "conveyance" to include.

SEC. 7. The term "conveyance," as used in this title, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

TITLE XXI.

Of the Domestic Relations.

Chaper 78. Of marriage.
79. Of divorce.
80. Of guardians and wards.
81. Of masters and apprentices.

CHAPTER 78.

OF MARRIAGE.

Section 1. Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential. Marriage a civil contract.

Sec. 2. Every male person who shall have attained the full age of eighteen years, and every female who shall have attained the full age of fifteen years, shall be capable in law of contracting marriage, if otherwise competent. Who shall be capable of contracting marriage.

Sec. 3. No marriage shall be contracted whilst either of the parties has a husband or wife living, nor between parties who are nearer of kin than first cousins, computing by the rules of the civil law, whether of the half or of the whole blood; and no insane person or idiot shall be capable of contracting marriage. Who shall not marry or intermarry.

Sec. 4. Marriages may be solemnized by any justice of the peace, in the county in which he is elected; and they may be solemnized throughout the state by any judge of a court of record, and by any ordained minister of the gospel, in regular communion with any religious society, and who continues to be a preacher of the gospel. Marriages by whom solemnized.

Sec. 5. Ministers of the gospel, before they shall be authorized to perform the marriage rite, shall file a copy of their credentials of ordination with the clerk of the circuit court of some county in this state, who shall record the same and give a certificate thereof; and the place where such credentials are recorded, shall be indorsed upon each certificate of marriage granted by any minister, and recorded with the same. Ministers to file copy of credentials, &c.

Sec. 6. All judges, justices of the peace, and ministers of the gospel, shall, before solemnizing any marriage, examine at least one of the parties on oath, which oath they are hereby authorized to administer, as to the legality of such intended marriage; and in no case shall such judge, justice, or minister, solemnize a mar- One of parties to be examined on oath before marriage.

riage, unless he is satisfied from such examination, that there is no legal impediment thereto.

When consent of parent or guardian necessary to marriage of a minor, &c.

Sec. 7. If any person intending to marry shall be under the age of twenty-one years, if a male, or under the age of eighteen years, if a female, and shall not have had a former wife or husband, the consent in person or in writing of the parent or guardian having the custody of such minor, if he or she have either a parent or guardian living in this state, shall first be given to the person solemnizing the marriage, before such marriage shall take place; and if such consent is in writing, it shall be signed by the parent or guardian, and attested by two witnesses, one of whom shall appear and make oath before the person who shall solemnize the marriage, that he saw such parent or guardian execute the same.

No particular form required; two witnesses necessary.

Sec. 8. In the solemnization of marriage, no particular form shall be required, except that the parties shall solemnly declare, in the presence of the judge, minister, or magistrate, and the attending witnesses, that they take each other as husband and wife; and in every case, there shall be at least two witnesses present, besides the person performing the ceremony.

When certificate of marriage to be given, and what to contain.

Sec. 9. Whenever a marriage shall have been solemnized, the person solemnizing the same, shall give to each of the parties, if requested, a certificate thereof, specifying therein the names and residence of the parties, and of at least two of the witnesses present, and the time and place of such marriage; and also stating therein that he had examined on oath one or both of the parties, and found no legal impediment to their marriage; and, where the consent of the parent or guardian is necessary, stating that the same was duly given.

Record to be made, and certificate delivered to clerk of circuit court.

Sec. 10. Every person solemnizing a marriage, shall make a record thereof, and within one month after such marriage, shall make, and deliver to the clerk of the circuit court of the county where the marriage took place, a certificate, under his hand, containing the particulars mentioned in the preceding section.

Clerk to file and record certificate; his fees.

Sec. 11. All such certificates shall be filed and recorded by the said clerk, in a book to be kept by him for that purpose; and for recording the same, such clerk shall receive a fee of twenty-five cents from the person solemnizing the marriage, who shall be entitled to receive the same from the parties before the marriage.

Forfeiture for neglect to make and deliver, or to record certificate.

Sec. 12. Every person solemnizing a marriage, who shall neglect to make and deliver to the clerk a certificate thereof, within the time above specified, shall forfeit for such neglect, a sum not less than twenty-five, nor more than one hundred dollars; and every clerk, who shall neglect to record such certificate so delivered, shall forfeit the like penalty.

Penalty for solemnizing marriage contrary to law, and for making false certificate

Sec. 13. If any person authorized by law to join persons in marriage, shall knowingly solemnize any marriage contrary to the provisions of this chapter, or shall wilfully make any false certificate of any marriage or pretended marriage, he shall forfeit for every such offence a sum not exceeding five hundred dollars, or may be imprisoned not exceeding one year.

Penalty on persons undertaking to marry who are not authorized, &c.

Sec. 14. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing of any legal impediment to the proposed marriage, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail, not more than one year, or by a fine not less than fifty, nor more than five hundred dollars, or by both such fine and imprisonment, in the discretion of the court.

When marriage not void, though the person officiating is not authorized.

Sec. 15. No marriage, solemnized before any person professing to be a judge, justice of the peace, or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed judge, justice, or minister, provided the marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Marriages among Friends or Quakers.

Sec. 16. All marriages solemnized among the people called Friends or Quakers, in the form heretofore practiced and in use in their meetings, shall be good and valid, and shall not be construed as affected by any of the foregoing provisions in this chapter; and the clerk of the meeting in which such marriages shall be solemnized, shall, within one month after every such marriage, deliver a certificate of the same to the clerk of the circuit court of the county where such marriage took place, on penalty of forfeiting fifty dollars; which certificate shall be filed and recorded by such clerk; and if such marriage do not take place in such meeting, such certificate shall be signed by the parties, and at least six witnesses present, and filed and recorded as above provided, under a like penalty upon such parties.

Certificates of marriage, and the record thereof, to be evidence.

Sec. 17. The original certificates and records of marriage, made by the judge, justice, or minister, as prescribed in this chapter, and the record thereof by the clerk of the circuit court, or a copy of such record duly certified by such clerk, shall be received in all courts and places, as presumptive evidence of the fact of such marriage.

CHAPTER 79.

OF DIVORCE.

What marriages void, without decree of divorce.

Section 1. All marriages which are prohibited by law, on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this state, be absolutely void, without any decree of divorce, or other legal proceeding.

When marriage void from the time its nullity is declared.

Sec. 2. When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or when the consent of either party shall have been obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be void from the time its nullity shall be declared by a court of competent authority.

When and how, suit may be

Sec. 3. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two

CHAPTER 79.

brought to annul marriage.

preceding sections, either party may file a petition or bill in chancery in the circuit court of the county where the parties, or one of them reside, for annulling the same, and such petition or bill shall be filed and proceedings shall be had thereon, as in the case of a petition or bill filed in said court for a divorce; and upon due proof of the nullity of the marriage, it shall be declared void by a decree or sentence of nullity.

When and how, proceedings may be had to affirm marriage.

SEC. 4. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a bill or petition in the manner aforesaid, for affirming the marriage; and upon due proof of the validity thereof, it shall be declared valid by a decree or sentence of the court; and such decree, unless reversed on appeal, shall be conclusive upon all persons concerned.

When marriage not to be declared a nullity or void.

SEC. 5. In no case shall a marriage be declared a nullity, on the ground that one of the parties was under the age of legal consent, if it shall appear that the parties, after they had attained such age, had for any time, freely cohabited together as husband and wife; nor shall the marriage of any insane person be declared void after his restoration to reason, if it shall appear that the parties freely cohabited together as husband and wife, after such insane person was restored to a sound mind.

Ib.

SEC. 6. A marriage shall in no case be declared a nullity on the application of a party capable of contracting, who entered into the marriage state with any person under the age of legal consent; nor shall the marriage of a person capable of contracting, with any idiot or insane person, be annulled on the application of such person thus capable to contract, if he knew of such idiocy or insanity at the time of such marriage.

Sentence of imprisonment for life to dissolve marriage.

SEC. 7. When either party shall be sentenced to imprisonment for life, the marriage shall be thereby absolutely dissolved, without any decree of divorce or other legal process, and no pardon granted to the party so sentenced, shall restore such party to his or her conjugal rights.

Where and in what court, divorce may be decreed.

SEC. 8. A divorce from the bond of matrimony, or from bed and board, may be decreed by the several circuit courts of this state sitting as a court of chancery, on suit brought in the county where the parties or one of them reside, on application by petition or bill of the aggrieved party.

Divorce from bond of matrimony, for what causes may be decreed.

SEC. 9. A divorce from the bond of matrimony may be decreed for either of the following causes:

1. For adultery:

2. For impotency:

3. When either party, subsequent to the marriage, has been sentenced to imprisonment for three years or more; and no pardon granted, after a divorce for that cause, shall restore the party sentenced to his or her conjugal rights:

4. For the wilful desertion of one party by the other for the term of one year next preceding the filing of the bill or petition:

5. Where the treatment of the wife by the husband has been cruel and inhuman, whether practiced by using personal violence, or by any other means: or where the wife shall be guilty of like cruelty to her husband, or shall be given to intoxication:

6. When the husband or wife shall have been a habitual drunk-

ard; for the space of one year immediately preceding the filing of the bill or petition.

Divorce from bed and board, when may be decreed.

SEC. 10. A divorce from bed and board forever, or for a limited time, may be decreed:

1. For the fourth, fifth, and sixth causes above specified:
2. For extreme cruelty of either party:
3. On the complaint of the wife, when the husband, being of sufficient ability, shall refuse or neglect to provide for her, or when his conduct, towards her is such as may render it unsafe and improper for her to live with him.

Divorce from bond of matrimony, for same causes, when may be granted.

SEC. 11. A divorce from the bond of matrimony may also be decreed, for either of the causes specified in the second and third subdivisions of the preceding section, whenever, in the opinion of the court, the circumstances of the case are such that it will be discreet and proper so to do.

When divorce not to be granted.

SEC. 12. No divorce shall be granted, unless the petitioner or complainant shall have resided in this state one year immediately preceding the time of exhibiting the petition or bill, except for adultery alleged to have been committed whilst the petitioner or complainant was a resident of this state, or unless the marriage was solemnized in this state, and the applicant shall have resided therein from the time of such marriage to the time of exhibiting the petition or bill.

When court may deny a divorce, though adultery established.

SEC. 13. In any suit brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

1. When the offence shall appear to have been committed by the procurement, or with the connivance of the complainant:
2. When the adultery charged shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties, with the knowledge of the offence:
3. When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have been brought within three years after the discovery by the complainant of the offence charged.

Wife may sue for divorce in her own name, and defendant may answer without oath.

SEC. 14. A petition or bill for divorce, or for affirming or declaring the marriage contract void, may be exhibited by a wife in her own name, or by her next friend; and in all cases the defendant may answer without oath or affirmation.

Proceedings same as in suits in equity.

SEC. 15. Suits to annul or affirm a marriage, or for a divorce, and all other matters coming within the purview of this chapter, not otherwise specially prescribed, shall be conducted in the same manner as other suits in courts of equity; and the court shall have power to award issues, to decree costs, and to enforce its decrees, as in other cases.

Court may require husband to furnish money for wife to prosecute or defend, and may decree costs, &c.

SEC. 16. In every suit specified in the preceding section, which shall be brought, the court may, in its discretion, require the husband to pay any sums necessary to enable the wife to carry on or defend the suit, during its pendency, and it may decree costs against either party, and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

Court may prohibit husband from imposing restraint on liberty of wife

SEC. 17. After the exhibiting of a petition or bill in a suit to annul a marriage, or for a divorce, whether from the bond of matrimony, or from bed and board, the court may at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of the suit.

May make order concerning care and maintenance of children, &c., during pendency of suit.

SEC. 18. The court may, in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance, during the pendency of such suit, and may make such temporary orders relative to the persons or property of the parties, as shall be deemed necessary and proper.

Order in relation to children, on final decree.

SEC. 19. Upon pronouncing a sentence or decree of nullity of marriage, and also upon decreeing a divorce, whether from the bond of matrimony, or from bed and board, the court may make such further decree as it shall deem just and proper concerning the care, custody, and maintenance of the minor children of the parties, and may determine with which of the parents the children, or any of them, shall remain, having due regard to the age and sex of such children.

Court may revise and alter decree concerning children.

SEC. 20. The court may, from time to time afterwards, on the petition of either of the parents, revise and alter such decree concerning the care, custody and maintenance of the children, or any of them, and make a new decree concerning the same, as the circumstances of the parents, and the benefit of the children shall require.

When wife entitled to her real estate.

SEC. 21. Whenever the nullity of a marriage, or a divorce from the bond of matrimony, for any cause excepting that of adultery committed by the wife, shall be decreed, and when the husband shall be sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate, in like manner as if her husband were dead.

Restoration to wife of her personal estate, &c.

SEC. 22. Upon every such dissolution of a marriage as is specified in the preceding section, and also upon every divorce from bed and board, the court may make a further decree for restoring to the wife the whole, or such part as it shall deem just and reasonable, of the personal estate that shall have come to the husband by reason of the marriage, or for awarding to her the value thereof, and also the value of any real estate of the wife disposed of by the husband and wife during the coverture, to be paid by her husband in money; and such court may require the husband to disclose on oath what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof still remains in his hands.

Court may appoint trustees to receive moneys decreed to wife, &c.

SEC. 23. The court shall have power to appoint a trustee or trustees, whenever the same shall be deemed expedient, to receive any sum or sums of money decreed to be paid to the wife, upon trust to invest the same, and pay over the income, for the support and maintenance of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct, or to pay over to the wife the principal sum, in such proportions and at such times as the court shall order, regard being had in all such cases to the situation and circumstances of such wife, and also the children, if there be any provided for in the decree; and such trustees shall give such bond, with surety as the court shall require, for the faithful performance of their trusts.

Court may further decree alimony, &c.

SEC. 24. Upon every divorce from the bond of matrimony, for any cause excepting that of adultery committed by the wife, and also upon every divorce from bed and board for any cause, if the estate and property restored or awarded to the wife, shall be insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, or if there be no such estate and property, the court may further decree to her such part of the personal estate of the husband, and such alimony, out of his estate, as it shall deem just and reasonable, having regard to the ability of the husband, and the character and situation of the parties, and all the other circumstances of the case.

When wife entitled to dower.

SEC. 25. When the marriage shall be dissolved by the husband being sentenced to imprisonment for life, and when a divorce shall be decreed for the cause of adultery committed by the husband, or on account of his being sentenced to imprisonment for a term of three years or more, the wife shall be entitled to her dower in his lands, in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

In such case court may also make allowance to wife from her estate.

SEC. 26. In the case last mentioned, the court may, by the decree, allow the wife for her subsistence as much of her said personal or real estate, or of the income thereof, as such court shall judge necessary.

Court may require security for the payment of alimony, &c.

SEC. 27. In all cases, when alimony or other allowance shall be decreed for the wife or children, the court may require sufficient security to be given by the husband for the payment thereof according to the terms of the decree; and upon the neglect or refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, the court may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate, and the rents and profits of such real estate, to be applied to the payment thereof.

Court may alter decree for alimony, &c., on petition.

SEC. 28 After a decree for alimony or other allowance, for the wife and children, or either of them, and also after a decree for the appointment of trustees to receive and hold any property for the use of the wife or children, as before provided, the court may, from time to time, on the petition of either of the parties, revise and alter such decree, respecting the amount of such alimony or allowance, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting any of the said matters which such court might have made in the original suit.

Court shall divide property, allow alimony, &c., subject to the provisions of this chapter.

SEC. 29. The court shall in all cases, subject to the provisions of this chapter, regulate the division and distribution of the estate, real and personal, between the parties, and the allowance for alimony to the wife, or to her and the minor children committed to her care and custody, according to equity and good conscience, having always due regard to the legal and equitable rights of each party, but nothing contained in this chapter shall authorize the court to divest any party of their title to or interest in any real estate, further than is expressly specified herein.

Children born before marriage, legitimatized by marriage, &c.

SEC. 30. When a man having by a woman one or more children, shall afterwards intermarry with such woman, such child or children, if recognized by him, shall be thereby legitimatized; the issue also of marriages declared null in law, shall, nevertheless, be legitimate.

When decree of divorce and alimony granted, court may revoke same on subsequent intermarriage of parties.

SEC. 31. When a decree of divorce has been granted, and the parties shall afterwards intermarry, the court, upon their joint application, and upon satisfactory proof of such marriage, may revoke all decrees and orders of divorce, alimony, and subsistence, which will not affect the rights of third persons.

Cohabitation after divorce, how punished.

SEC. 32. If any persons, after being divorced from the bond of matrimony, for any cause whatever, shall cohabit together before intermarriage, they shall be liable to all the penalties provided by law against adultery.

Court may decree support, though divorce from bed and board be not granted.

SEC. 33. In case of an application for a divorce from bed and board, although a decree for such divorce be not made, the court may make such order or decree for the support and maintenance of the wife and children, or any of them, by the husband, or out of his property, as the nature of the case may render suitable and proper.

Decrees for divorce from bed and board may be revoked.

SEC. 34. When a decree of divorce from bed and board, forever, or for a limited time, shall have been pronounced, it may be revoked at any time thereafter, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and their producing satifactory evidence of their reconciliation.

Decree of divorce from bed and board shall dissolve the marriage contract as to both parties.

SEC. 35. Whenever a decree of divorce from the bond of matrimony is granted in this state, by a court of competent authority, such decree shall fully and completely dissolve the marriage contract as to both parties.

CHAPTER 80.

OF GUARDIANS AND WARDS.

Judge of probate may appoint guardians.

SECTION 1. The judge of probate in each county, when it shall appear to him necessary or convenient, may appoint guardians to minors and others, being inhabitants or residents in the same county, and also to such as shall reside without the state, and have any estate within the same.

Who to nominate guardians.

SEC. 2. If the minor is under the age of fourteen years, the judge of probate may nominate and appoint his guardian, and if he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the judge, shall be appointed accordingly.

In what case judge to nominate.

SEC. 3. If the guardian nominated by such minor shall not be approved by the judge, or if the minor shall reside out of this state, or if, after being cited by the judge, he shall neglect for ten days to nominate a suitable person, the judge may nominate and appoint the guardian, in the same manner as if the minor were under the age of fourteen years.

When nomination may be certified by justice of the peace, &c.

SEC. 4. When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the probate court, his nomination of a guardian may be certified to the judge of probate by a justice of the peace, or by the town clerk, which shall have the same effect as if made in the presence of the judge.

Parent, when entitled to custody of minor child.

SEC. 5. The father of the minor, if living, and in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, shall be entitled to the custody of the person of the minor, and to the care of his education.

When guardian to have custody of ward, &c.

SEC. 6. If the minor have no father or mother living, and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

Powers and duties of guardians.

SEC. 7. Every guardian appointed as aforesaid, shall have the custody and tuition of the minor, and the care and management of his estate, until such minor shall arrive at the age or twenty-one years, or until the guardian shall be discharged according to law.

Bond of guardians.

SEC. 8. Before appointing any person guardian of a minor, the judge shall require of such person a bond to the minor, with sufficient sureties, to be approved by the judge, and in such sum as he shall order, conditioned as follows:

1. To make a true inventory of all the estate, real and personal of his ward, that shall come to his possession or knowledge, and to return the same into the probate court of the proper county, within such time as the judge shall order:

2. To dispose of and manage all such estate according to law, and for the best interest of the ward; and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward:

3. To render an account, on oath, of the property, estate and moneys of the ward in his hands, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within one year after his appointment, and at such other times as the proper court shall direct: and,

4. At the expiration of his trust, to settle his accounts with the judge of probate, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

When expenses of education of minor to be defrayed from income of his property.

SEC. 9. If any minor, who has a father living, has property, the income of which is sufficient for his maintenance and education, in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable, and shall be directed by the probate court, and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Appointment of guardian by will, and powers and duties of such guardian.

SEC. 10. The father of every legitimate child which is a minor, may, by his last will in writing, appoint a guardian or guardians for any of his minor children, whether born at the time of making such will or afterwards, to continue during the minority of such child, or for any less time; and every such testamentary guardian shall give bond in like manner, and with like condition, as is herein before required of a guardian appointed by the said judge, and he shall have the same powers, and shall perform the same duties, with regard to the person and estate of the ward, as a guardian appointed as aforesaid.

Powers of court to appoint guardians, &c., to prosecute or defend suits, &c.

SEC. 11. Nothing contained in this chapter shall affect or impair the power of any court to appoint a guardian to defend the interests of any minor, impleaded in such court, or interested in any suit or matter pending therein, nor to appoint, or allow any person, as the next friend of a minor, to commence and prosecute any suit in his behalf.

Application for appointment of guardian for insane person, &c.

SEC. 12. Whenever it shall be represented to the judge of probate, upon petition verified by affidavit, by any relative or friend of any insane person, or of any person who by reason of extreme old age or other cause, is mentally incompetent to have the charge and management of his property, that such person is insane or mentally incompetent to manage his property, said judge shall cause a notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than fourteen days before the time so appointed, and shall also cause such person, if able to attend, to be produced before him on the hearing.

Hearing and appointment.

SEC. 13. If, after a full hearing and examination upon such petition, it shall appear to the judge of probate that the person in question is incapable of taking care of himself and managing his property, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Powers and duties of such guardian.

SEC. 14. Every guardian so appointed as provided in the preceding section, shall have the care and custody of the person of his ward, and the management of all his estate, until such guardian shall be legally discharged; and he shall give bond to such ward, in like manner, and with the like condition, as is before prescribed with respect to the guardian of a minor.

When guardian may be appointed for spendthrift, &c.

SEC. 15. When any person, by excessive drinking, or by gaming, idleness, or debauchery of any kind, shall so spend, waste, or lessen his estate, as to expose himself or his family to danger of want or suffering, or the town to charge or expense for the support of himself or his family, any one or more supervisors or justices of the peace of the town of which such spendthrift is an inhabitant, or in which he resides, may present a complaint to the judge of probate, setting forth the facts and circumstances of the case, and praying to have a guardian appointed for him.

Notice to supposed spendthrift, and appointment of guardian.

SEC. 16. The judge of probate shall cause a notice to be given to such supposed spendthrift, of the time and place of hearing the case, not less than fourteen days before the time so appointed; and if after a full hearing it shall appear to the court that the person complained of comes within the description contained in the preceding section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Copy of complaint may be filed, &c, with register of deeds, and its effect.

Sec. 17. After the order for notice has been issued, the complainant or complainants, may cause a copy of the complaint, with the order for such notice to be filed and recorded in the office of the register of deeds for the county, and if a guardian shall be appointed upon such application, all contracts, except for necessaries at reasonable prices, and all gifts, sales, and transfers of real or personal estate, made by such spendthrift after the filing of a copy of such complaint and order as aforesaid, and before the termination of the guardianship, shall be utterly void.

Allowance to be made for expenses of ward in such cases, in defending himself.

Sec. 18. When a guardian shall be appointed for an insane person or a spendthrift, the judge shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the complaint.

Powers and duties of guardian of spendthrift.

Sec. 19. Every guardian appointed for a spendthrift shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged; and he shall give bond to his ward in like manner, and with like condition, as is hereinbefore directed with respect to the guardian of a minor.

Guardian to pay debts of his ward out of his estate.

Sec. 20. Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, shall pay all just debts due from the ward out of his personal estate and the income of his real estate, if sufficient, and if not, then out of his real estate, upon obtaining license for the sale thereof, and disposing of the same in the manner provided by law.

Guardian to settle accounts, and collect debts of ward, &c.

Sec. 21. Every such guardian shall also settle all accounts of the ward, and demand, sue for and receive all debts due to him, or may, with the approbation of the judge of probate, compound for the same, and give a discharge to the debtor, on receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward, in all legal suits and proceedings, unless where another person is appointed for that purpose as guardian or next friend.

How to manage estate of his ward.

Sec. 22. Every guardian shall manage the estate of his ward frugally, and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if such income and profits shall be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward, and his family, if there be any.

Guardian may assent to partition and assign dower

Sec. 23. The guardian may join in and assent to a partition of the real estate of the ward, in the cases, and in the manner provided by law, and he may also assign and set out dower in the said estate to any widow entitled thereto.

Appraisal of estate of ward, and personal estate, how disposed of.

Sec. 24. Upon the taking of any inventory required by this chapter, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of the estate of a deceased testator or intestate; and every guardian shall account for and dispose of the personal estate of the ward, in like manner as is directed with respect to executors and administrators.

Court may authorize transfer of stocks, &c., and investment of same, &c.

SEC. 25. The judges of probate in their respective counties, on the application of a guardian, or of any person interested in the estate of any ward, after such notice to all persons interested therein as the judge of probate shall direct, may authorize or require the guardian to sell and transfer any stock in public funds, or in any bank, or other corporation, or any other personal estate or effects held by him as guardian, and to invest the proceeds of such sale, and also any other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and the said probate court may make such further orders, and give such directions, as the case may require, for managing, investing, and disposing of the estate and effects in the hands of the guardian.

Removals and resignations of guardians.

SEC. 26. When any guardian, appointed either by the testator, or by the judge of probate, shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge of probate, after notice to such guardian and all others interested, may remove him; and every guardian may, upon his request, be allowed to resign his trust, when it shall appear to the judge of probate proper to allow the same; and upon every such resignation or removal, and upon the death of any guardian, the judge of probate may appoint another in his place.

Marriage of female ward terminates guardianship. Discharge of guardian in certain cases.

SEC. 27. The marriage of any female who is under guardianship as a minor, shall terminate such guardianship; and the guardian of any insane person, spendthrift, or other person, may be discharged by the judge of probate, when it shall appear to him, on the application of the ward, or otherwise, that such guardianship is no longer necessary.

When new bond to be given by guardian, &c.

SEC. 28. The judge of probate may require a new bond to be given by any guardian, whenever he shall deem it necessary, and may discharge the existing sureties from future responsibility, after due notice given as such court may direct, when it shall satisfactorily appear that no injury can result therefrom to those interested in the estate.

Bond, where to be filed, and when and how to be prosecuted.

SEC. 29. Every bond given by a guardian shall be filed and preserved in the office of the clerk of the circuit court of the county, and in case of any breach of the condition thereof, may be prosecuted in the name of the ward, for the use and benefit of such ward, or of any person interested in the estate, whenever the judge of probate shall direct.

Within what time action to be brought against sureties in bond.

SEC. 30. No action shall be maintained against the sureties in any bond given by a guardian, unless it be commenced within four years from the time when the guardian shall have been discharged; provided, that if, at the time of such discharge, the person entitled to bring such action shall be out of the state, or under any legal disability to sue, the action may be commenced at any time within four years after the return of such person to the state, or after such disability shall be removed.

Proceedings in case of embezzlement, &c., of property of ward.

SEC. 31. Upon complaint made to the judge of probate by any guardian, or by the ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods or effects, or any instrument in writing, belonging to the ward, the judge may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

Guardian for minors, &c., residing without the state.

Sec. 32. When any minor, or other person liable to be put under guardianship, according to the provisions of this chapter, shall reside without this state, and shall have any estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the judge of probate of any county in which there may be any estate of such absent person; and after notice given to all persons interested, in such manner as the judge shall order, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

Powers and duties of such guardians.

Sec. 33. Every guardian appointed under the provisions of the preceding section, shall have the same powers, and perform the same duties with respect to any estate of the ward that shall be found within this state, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed by force of this chapter.

Bond to be given by same.

Sec. 34. Every such guardian shall give bond to the ward, in like manner, and with the like condition as is herein before provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and effects as shall come to his hands in this state.

Guardianship first granted to be exclusive throughout the state.

Sec. 35. The guardianship which shall be first lawfully granted, of any person residing without the state, shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the probate court in every other county.

Compensation, &c., of guardians.

Sec. 36. Every guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he shall also have such compensation for his services as the court in which his accounts are settled shall deem to be just and reasonable.

More than one guardian may be appointed for same person.

Sec. 37. The court, in its discretion, whenever the same shall appear necessary, may appoint more than one guardian of any person subject to guardianship, who shall give bond, and be governed, and liable in all respects as is provided respecting a sole guardian.

Account of joint guardians, how may be allowed.

Sec. 38. When an account is rendered by two or more joint guardians, the judge of probate may, in his discretion, allow the same upon the oath of any one of them.

Word "spendthrift" defined.

Sec. 39. The word "spendthrift," in all the provisions relating to guardians and wards, contained in this chapter is intended to include every person who is liable to be put under guardianship on account of excessive drinking, gaming, idleness, or debauchery.

CHAPTER 81.

OF MASTERS AND APPRENTICES.

Infants may bind themselves as apprentices, &c., and for what terms.

SECTION 1. Every male infant, and every unmarried female under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may, of his or her own free will, bind himself or herself in writing, to serve as clerk, apprentice, or servant, in any profession, trade, or employment, if a male, until the age of twenty one years, and if a female until the age of eighteen years, or until her marriage within that age, or for any shorter time; and such binding shall be as valid and effectual as if such infant was of full age, at the time of making such engagement.

Consent by whom to be given.

SEC. 2. Such consent shall be given,

1. By the father of the infant. If he be dead, or be not in a legal capacity to give his consent, or if he shall have abandoned and neglected to provide for his family, and such fact be certified by a justice of the peace of the town, and indorsed on the indenture, then,
2. By the mother. If the mother be dead, or be not in a legal capacity to give such consent, or refuse, then,
3. By the guardian of such infant duly appointed. If such infant have no parent living, or none in a legal capacity to give consent, and there be no guardian, then,
4. By the supervisors, or any two justices of the peace of the town where such infant shall reside.

How consent to be signified.

SEC. 3. Such consent shall be signified by the person or officers entitled to give the same, by writing, at the end of or indorsed upon each part of the indentures, signed by such person or officers, and not otherwise.

Indentures, how executed.

SEC. 4. No minor shall be bound as aforesaid, unless by indentures in two parts, sealed and delivered by both parties.

Parent or other person may become a party with the minor.

SEC. 5. Any parent, guardian, or other person, may become a party to any indenture of apprenticeship by signing and sealing the same together with the minor, and may thereby become liable to the master for the performance of any or all the covenants contained in such indenture to be performed by the minor.

Age of minor to be inserted in indentures, &c.

SEC. 6. The age of every infant, bound pursuant to the provisions of this chapter, shall be inserted in the indentures, and shall be taken to be the true age without further proof thereof, and whenever any public officers are authorized to execute any indentures, or their consent is required to the validity of the same, it shall be their duty to inform themselves fully of the infant's age.

Counterpart of certain indentures, where to be deposited.

SEC. 7. The counterpart of any indentures executed by any public officer or officers, shall be by them deposited in the office of the clerk of their town or city.

Provisions for benefit of minor to be inserted.

SEC. 8. Provision shall be made in every indenture specified in this chapter, for teaching the apprentice to read and write, and to be instructed in the general rules of arithmetic, and that the master will give such apprentice, at the expiration of his or her service, a new bible; and for such other instruction, benefit, and allowance to such apprentice, as may be agreed upon.

Provisions when minor bound for less than three years.

SEC. 9. When, however, any minor shall be bound an apprentice for a less term than three years, such agreement in reference to the instruction of such minor may be made, as shall be deemed right, irrespective of the provisions of the preceding section.

Moneys, &c, paid by master, to be for use of minor.

SEC. 10. All considerations of money or other things paid or allowed by the master, upon any indenture of apprenticeship or service, made in pursuance of this chapter, shall be paid or secured to the sole use of the minor bound thereby.

Who bound to inquire into treatment of apprentices, and to defend them.

SEC. 11. All persons shall inquire into the treatment of apprentices bound by them respectively, or with their consent or approbation, or who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect, and breach of the indentures, on the part of their masters.

Complaint against master for misconduct, &c.

SEC. 12. In case any apprentice shall be misused, ill treated, or neglected, by his master, or by any person under the direction, or by the permission of such master, the next friend of such apprentice, or any person on his behalf, may file a complaint in the probate court for the county in which the master resides, setting forth the facts and circumstances of the case, and the court, after having caused such notice as it shall deem reasonable, to be given to the master, shall proceed to hear and determine the cause.

When court may discharge minor, and award costs against master.

SEC. 13. After a full hearing of the parties, or of the complainant alone in case the master shall neglect to appear, the court may make an order or decree, that the minor be discharged from his apprenticeship or service, and for the costs of the proceeding against the master, and may issue execution therefor accordingly, and the minor may be bound out anew, unless such order be reversed on appeal.

When costs to be awarded against complainant, &c.

SEC. 14. If the complaint he not sustained, the court shall order costs to be paid by the complainant to the master, and issue execution therefor accordingly; excepting, that if such complaint be made by any officer or officers authorized to bind out minors, the court shall not award costs against them, unless it shall appear that the complaint was made without any just or reasonable cause.

Master liable for breach of indenture, and how action brought.

SEC. 15. Every master shall also be liable, whether such complaint shall have been filed or not, to an action on the indenture, for the breach of any covenant on his part therein contained; which action shall be brought in the name of the minor, by his guardian or next friend, or by himself, after his majority.

Damages recovered to be property of minor, &c.

SEC. 16. If such action be brought, and a recovery be had, during the minority of such apprentice or servant, the damages recovered in such action, after paying the necessary charges of the prosecution, shall be the property of the minor, and may be appropriated to his use, or invested for his benefit, in the same manner as any other property belonging to such minor.

Within what time action to be commenced.

SEC. 17. No such action shall be maintained by any apprentice or servant, unless it be commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

If judgment rendered for minor, he may

SEC. 18. If judgment in such action shall, upon the final determination thereof, be rendered for the plaintiff, the court in which be discharged, &c.

the same is prosecuted may thereupon, by an order to be entered in its minutes, discharge the minor from his apprenticeship or service, if it shall not have been already done in the manner before provided, and the minor may thereupon be bound out anew.

Proceedings if apprentice or servant leave the service of his master.

Sec. 19. If any apprentice or servant bound as aforesaid, shall unlawfully depart from the service of his master, any justice of the peace, upon complaint on oath made to him by the master, or by any one in his behalf, may issue his warrant to apprehend the apprentice or servant, and bring him before such justice.

Justice may order offender to be returned, or may commit him.

Sec. 20. If such complaint be supported, the justice may order the offender to be returned to his master, or may commit him to the common jail, there to remain for a term not exceeding twenty days, unless sooner discharged by his master.

Warrant shall authorize that offender be carried to his master.

Sec. 21. The justice's warrant, when directed to any officer or other person by name, shall authorize him to convey the offender to the place of residence of the master, although it may be in any other county in the state.

Who to pay costs, &c.

Sec. 22. All the costs incurred on any such process against an apprentice or servant, shall be paid in the first instance by the master; and if the complaint be supported, the amount of such costs may be recovered in an action against the minor, after he shall arrive at full age.

Time wilfully lost shall be returned by apprentice, &c.

Sec. 23. All time wilfully or unlawfully lost from the service of his master, by any apprentice, shall be returned by him, day for day, immediately at the expiration of the apprenticeship; and if such apprentice refuses thus to return the same, he shall be liable for damages therefor, to be recovered in an action of assumpsit in any court of competent jurisdiction; but no action shall be maintained as provided in this and the preceding section, unless the same is brought within three years after the expiration of such apprenticeship.

Complaint against apprentice for misbehavior, and proceedings thereon.

Sec. 24. If any such apprentice or servant shall be guilty of any gross misbehavior, or refusal to do his duty, or wilful neglect thereof, his master may file his complaint in the probate court of the county where he resides, and the court, after causing such notice as it shall deem reasonable to be given to the parent or guardian who consented to the binding of such apprentice or servant, or to the officers who bound him, or their successors in office, shall proceed to hear and determine the cause.

When court may discharge master from indentures, &c.

Sec. 25. After a full hearing of the parties, or of the complainant, if the adverse party shall neglect to appear, the court may make an order or decree, that the master be discharged from the contract of apprenticeship or service, and for the costs of the suit; and the amount of such costs may be recovered in an action against the minor, with interest thereon, after he shall have arrived at full age, and such minor may be bound out anew.

Minor discharged by death of master, &c.

Sec. 26. No indenture of apprenticeship or service, made in pursuance of this chapter, shall bind the minor after the death of the master, but the minor shall be thenceforth discharged therefrom, and may be bound out anew.

Apprentice not to be bound not to set up trade, &c.

Sec. 27. No master shall accept from any apprentice, any contract or agreement, nor cause him to be bound by oath or otherwise, that, after his term of service has expired, such apprentice shall not set up his trade, profession, or employment, in any particular place, shop, house, or cellar; nor shall any master exact from any apprentice, after his term of service has expired, any money or other things, for using and exercising his trade, profession or employment, in any place.

Preceding provisions to apply to mistresses as well as masters.

SEC. 28. An indenture of apprenticeship or service, made in pursuance of this chapter, by or in behalf of a minor, may be made either with a woman or a man, capable in law of contracting; and all the foregoing provisions shall apply as well to mistresses as to masters.

Common law right of father not affected.

SEC. 29. Nothing contained in this chapter shall prevent or affect the right of a father, by the common law, to assign or contract for the services of his children, for the term of their minority, or any part thereof.

Mother of illegitimate child may consent to binding.

SEC. 30. The mother of an illegitimate minor child, shall have power to give the consent authorized in this chapter, to the binding of such child, during the lifetime of the putative father, as well as after his death.

PART III.

OF COURTS AND JUDICIAL OFFICERS; OF SUITS AND PROCEEDINGS IN CIVIL CASES, AND OF COSTS AND FEES.

TITLE XXII.

Of Courts and Judicial Officers.

Chapter 82. Of the supreme court.
83. Of the circuit courts.
84. Of courts of chancery and proceedings therein.
85. Of probate courts.
86. Of county courts.
87. General provisions concerning courts of record; of the powers and duties of judges, and of attorneys and officers of court.
88. Of courts held by justices of the peace.
89. Of the jurisdiction of justices in criminal cases, and of the proceedings therein.

CHAPTER 82.

OF THE SUPREME COURT.

Section 1. The several judges of the supreme court shall, and they are hereby required, to meet at the supreme court room, in Madison, on the second Tuesday of June, A. D., one thousand eight hundred and forty-nine, and hold a term of the supreme court for the purpose of preparing and promulgating a code of rules of practice for the different courts of the state, and also to dispose of any other business that may be on the calendar for their disposition, as at any other term; and all rules adopted and published by the supreme court, shall be taken and construed to have the same binding force and effect that is given to a law, until the said rules shall be amended or altered by the supreme court or the legislature.

Judges of supreme court when to meet and adopt rules, &c.; force and effect of rules.

Sec. 2. There shall, after the year one thousand eight hundred and forty-nine, be held at Madison, in the supreme court room,

Terms of supreme court,

When and where held.

two sessions of the supreme court each year, to be called the January and June terms: the January term shall commence on the second Tuesday of January, and the June term shall commence on the second Tuesday of June of each and every year.

Judges to make rules in regard to process and judgments, &c.

SEC. 3. The judges of the supreme court are hereby authorized to make such rules in regard to the issuing and return of process, and also to regulate the manner in which judgment may be entered in the supreme, circuit, and county courts, as they may deem proper; which rules shall be uniform, as near as may be, throughout the state.

Supreme court may make and amend rules of practice, &c.

SEC. 4. The supreme court shall have power to make, annul, alter, amend or modify any rule of practice of the circuit or supreme court, as they shall see fit, giving due notice thereof by publication.

Power of supreme court to issue writs and process, &c.

SEC. 5. The supreme court shall have power to issue writs of mandamus, quo warranto, prohibition, error, supersedeas, procedendo, certiorari, scire facias, and all other writs and process not specially provided for by statute, which may be necessary to enforce the due administration of right and justice throughout the state; but no writ of error shall operate as a supersedeas, unless granted by order of the court upon motion, or by a judge in vacation, upon inspection of the record, or a certified copy thereof.

Supreme court to exercise appellate jurisdiction only.

SEC. 6. The supreme court of this state shall have and exercise an appellate jurisdiction only, which shall extend to all matters of appeal, error or complaint from the decisions, judgments or decrees of any of the circuit courts and county courts, in all matters of law or equity, and shall also extend to all questions of law which may arise in the said circuit courts upon a motion for a new trial, in arrest of judgment, or in cases reversed by the said courts.

Power of supreme court to carry into effect its decrees, and to enforce its jurisdiction.

SEC. 7. The supreme court shall be vested with all power and authority necessary for carrying into complete execution all its judgments, decrees and determinations in the matters aforesaid, and for the exercise of its jurisdiction as the supreme judicial tribunal of this state, agreeably to the usages and principles of law; and any judge of said court in vacation shall, on good cause shown, have power to allow writs of error, supersedeas and certiorari, as before provided for, and also to grant writs of injunction.

Power of judges to allow writs at chambers.

If four judges do dot attend, court to be adjourned.

SEC. 8. If four of the judges of the said court shall not attend on the first day of the term, the clerk shall enter such fact on record, and the court shall stand adjourned until the succeeding day, and so from day to day for six days; and if the court shall not be opened within six days, all matters pending in said court shall stand continued of course until the next term, and no action or matter shall abate or be discontinued: Provided, three of the judges shall have power to adjourn said court to the next term.

Court to give their decisions in writing, and to appoint a reporter.

SEC. 9. The said court shall give their decisions on all cases in writing, which shall be filed with the other papers in the case, and the said court shall appoint some attorney to minute down and make report of all the principal matters in the cases, with the decision of the court.

CHAPTER 83.

OF THE CIRCUIT COURTS.

State divided into five judicial circuits.

SECTION 1. The state shall be divided into five judicial circuits to be composed as follows:

The first circuit shall comprise the counties of Racine, Walworth, Rock and Green:

The second circuit, the counties of Milwaukee, Waukesha, Jefferson and Dane:

The third circuit, the counties of Washington, Dodge, Columbia, Marquette, Sauk and Portage:

The fourth circuit, the counties of Sheboygan, Manitouwoc, Brown, Winnebago, Calumet and Fond du Lac:

The fifth circuit shall comprise the counties, of Iowa, LaFayette, Grant, Crawford and St. Croix; and the county of La Pointe shall be attached to the county of St. Croix; the county of Chippewa to the county of Crawford; the county of Richland to the county of Iowa; the county of Calumet to the county of Fond du Lac; and the county of Adams to the county of Sauk, for judicial purposes, until otherwise provided by the legislature.

Times of holding circuit courts.

SEC. 2. The circuit courts of the state shall be holden at the times and places following, to wit:

First circuit.

For the first circuit: In the county of Racine, on the third Monday in April and third Monday in October of each year.

In the county of Walworth, on the third Monday in May and first Monday in October of each year.

In the county of Rock, on the third Monday in March and third Monday in September of each year.

In the county of Green, on the first Monday in March and first Monday in September of each year.

Second circuit.

For the second circuit: In the county of Milwaukee on the first Monday in February, the first Monday in May, and the third Monday in September of each year.

In the county of Waukesha, on the second Monday in March and second Monday in November of each year.

In the county of Jefferson, on the fourth Monday in April and fourth Monday in October of each year.

In the county of Dane, on the first Wednesday after the first Monday in April, and second Monday in October of each year.

Third circuit.

For the third circuit: In the county of Washington on the fourth Monday in April and the fourth Monday in October of each year.

In the county of Dodge, on the second Monday in April and the first Monday in October of each year.

In the county of Columbia, on the third Monday in May and the third Monday in September of each year.

In the county of Marquette, on the first Monday in April and fourth Monday in September of each year.

In the county of Sauk, on the fourth Monday in March and the second Monday in September of each year.

In the county of Portage, on the second Monday in March and the last Monday in August of each year.

Fourth circuit.

For the fourth circuit: In the county of Sheboygan, on the second Monday in March and the third Monday in September of each year.

In the county of Manitouwoc, on the first Thursday after the third Monday in March, and on the first Thursday after the fourth Monday in September of each year.

In the county of Brown, on the fourth Monday in March and first Monday in October of each year.

In the county of Winnebago, on the second Monday in April and third Monday in October of each year.

In the county of Fond du Lac, on the third Monday in April and fourth Monday in October of each year.

Fifth circuit.

For the fifth circuit: In the county of Iowa, on the first Monday in April and third Monday in October of each year.

In the county of Grant, on the third Monday in March and first Monday in October of each year.

In the county of La Fayette, on the first Monday in March and third Monday in September of each year.

In the county of Crawford, on the first Monday in May and the second Monday in November of each year.

In the county of St. Croix, on the first Monday in August and first Monday in February of each year.

Writs, &c., returnable, and adjournments, &c., had after this chapter shall take effect, how to be regarded.

Sec. 3. All writs, summons, process, indictments, recognizances and other proceedings, made returnable by the act of August 19th, 1848, entitled "An act to establish the times of holding circuit courts," to the terms of the several circuit courts of the state, shall be returnable to the terms of said courts, as the same are herein before fixed; and all adjournments, appearances, continuances, motions, and notices of any proceedings in said courts, made or taken to any term of a date subsequent to the time when this chapter shall take effect, shall be held to be made and taken for the time herein before fixed for holding the terms of said courts.

Judge of circuit court may appoint one extra jury term.

Sec. 4. It shall be lawful for the judge of any circuit in this state to appoint not exceeding one extra jury term of court, to be holden in any county in said circuit, in case he shall deem such term necessary to complete the jury trials of such county during any year, and to cause lists of petit jurors to be drawn, and writs of venire to issue, as in other cases.

Circuit judges may hold special and adjourned terms, &c.

Sec. 5. It shall and may be lawful for the judges of the circuit courts of this state, to hold special or adjourned terms, at any time they shall deem it necessary, for the purpose of hearing and disposing of all motions or questions of law; and all judgments, orders, or decrees, that may be made or entered at said special terms, shall be as valid and effectual, to all intents and purposes, as any judgments, orders, or decrees, made or entered in term time.

Powers and jurisdiction of circuit courts, and the judges thereof, in vacation.

Sec. 6. The circuit courts shall have original jurisdiction within their respective circuits, in all civil actions at law or equity, and the judges of said courts shall be conservators of the peace; and the said courts in term time, and the judges thereof in vacation, shall have power to award, throughout this state, returnable in the proper county, writs of injunction, ne exeat, and all other writs and process which may be necessary to the due execution of the powers with which they are vested; and the said courts shall respectively have power and authority to hear and determine all cases of crimes and misdemeanors of whatever kind, not exclusively cognizable by a justice of the peace, which may be committed in any county or place within their respective circuits.

Circuit courts to have original jurisdiction in cases of mandamus and quo warranto.

SEC. 7. The circuit courts of this state shall have original jurisdiction in all cases of mandamus and quo warranto, and in all such cases, the final judgment of the circuit courts of this state may be examined in the supreme court upon writ of error duly sued out and prosecuted as in other cases.

When court may award special venire.

SEC 8. It shall and may be lawful for the judge of the circuit court of either of the counties of this state, whenever there shall happen to be a deficiency of jurors for any cause whatever, to award a special venire or venires, through the term, on any day or days of the term, to the sheriff of the proper county, to summon a number of jurors sufficient to complete the number of the original panel.

CHAPTER 84.

OF COURTS OF CHANCERY AND PROCEEDINGS THEREIN.

Of the jurisdiction of Circuit Courts in Chancery, and of proceedings therein.

Circuit courts to have equity jurisdiction.

SECTION 1. The circuit courts of the state shall have jurisdiction in cases properly cognizable by a court of chancery, in which a plain, adequate and complete remedy cannot be had at law.

Proceedings in, how regulated.

SEC. 2. The proceedings in the courts aforesaid, where they are not regulated by the statutes of this state, shall be regulated by the judges thereof, conforming to the usages of courts of chancery.

When suits to be dismissed.

SEC. 3. The court shall dismiss every suit in chancery concerning property, where the matter in dispute, exclusive of costs, does not exceed the value of five dollars, with costs in favor of the defendant.

Chancery terms to be same as common law terms; court may appoint special terms.

SEC. 4. The stated terms of the courts of chancery shall be the same as those of the courts sitting as courts of common law jurisdiction; and each of said courts shall have power to appoint as many special terms as they may deem proper.

Applications to be by bill filed with clerk.

SEC. 5. All applications to the chancery side of said court, shall be by bill, stating the nature and ground of the complainant's claim, and shall be filed in the office of the clerk of such court.

Complainant may insert as many defendants as he thinks proper; when he shall pay costs.

SEC. 6. The complainant may insert in his bill as many defendants as he may think proper, though they claim under different titles; but if any of the defendants disclaim, the complainant shall pay costs, except the court shall for special reasons decree otherwise.

Bill to compel discovery of property, when filed.

Sec. 7. Whenever an execution against the property of a defendant shall have been issued on a judgment at law, and shall have been returned unsatisfied, in whole or in part, the party suing out such execution may file a bill in chancery against such defendant, and any other person, to compel the discovery of any property or thing in action belonging to the defendant, and of any property, money or thing in action due, or held in trust for him; and to prevent the transfer of any such property, money or thing in action, or the payment or delivery thereof to the defendant, except where such trust has been created by, or the fund so held in trust has proceeded from, some person other than the defendant himself.

Set-offs, how allowed.

Sec. 8. In suits for the payment or recovery of money, set-offs shall be allowed in the same manner, and with the like effect, as in actions at law.

Solicitor or counsel to pay costs occasioned by prolixity of bill, &c.

Sec. 9. Whenever any bill, answer or other proceeding filed in the court of chancery, shall satisfactorily appear to the judge to have been made unnecessarily prolix for the purpose of increasing the costs, it shall be the duty of the judge to order the solicitor or counsel, by whom such bill, answer or other proceeding shall have been drawn, to pay the costs occasioned by such unnecessary prolixity, to the party injured thereby.

When bill of discovery may be filed.

Sec. 10. A bill of discovery may be filed, and the defendant shall be compelled to answer such bill, where the defendant is charged of having given to another person a warrant of attorney to enter up a judgment, or with having confessed or suffered any judgment, purporting to be for a sum or debt due, when in fact nothing, or only a part of the sum mentioned in such warrant of attorney or judgment, is due, with intent to defraud the just creditors of such defendant, or to place the property of the defendant out of the reach of his creditors, or to hold the same on some secret trust or confidence, or for the benefit of such defendant.

Answer on such bill, when not to be evidence.

Sec. 11. No answer made to any bill filed under the last section shall be read in evidence against the defendant, on the trial of any indictment for the fraud charged in the bill.

Power of court to take proof of and establish lost will.

Sec. 12. Whenever any will of real or personal estate shall be lost or destroyed, by accident or design, the court of chancery shall have the same power to take proof of the execution and validity of such will, and to establish the same, as in the case of lost deeds.

Subpœna, &c., not to issue until bill filed.

Sec. 13. No subpœna or other process for appearance shall issue out of said court until after the filing of the bill, except in cases of bills for injunctions to stay waste, or proceedings at law; and no injunction shall be issued in any case, until the complainant's bill shall be filed.

Process to whom directed; where suit to be instituted, &c.

Sec. 14. All process may be directed to the sheriff, or other proper officer of any county in this state, and shall by him be executed and returned to the court from whence it issued. And if there be more than one defendant in a suit, such suit may be instituted in the county where either of the defendants resides; and the clerk of the court may issue process against the other defendant, directed to the sheriff, or other proper officer of the county where they may be found; and on the return thereof, the like proceedings may be had as if all the defendants resided in the county where such suit is instituted; and the courts shall have power to enforce their decrees by process, directed in the manner aforesaid, in all cases in which they are authorised to hear and determine the matter in controversy.

Process how tested and made returnable; duty of sheriff, &c., in executing same.

SEC. 15. All process issuing from the circuit court, in proceedings in chancery, shall be tested in the name of the judge of the court from which it shall issue, or some one of the judges of the supreme court, and shall bear test on the day on which the same shall be issued, and shall be made returnable on a day certain, therein to be mentioned, either in term time or vacation; and it shall be the duty of the sheriff, or other officer, to whom any subpœna, order, attachment, process of sequestration, writs of execution, or other process in chancery, shall be directed or delivered, to serve and execute the same, and to make return thereof at the time and place therein mentioned.

Subpœna, how served.

SEC. 16. Every subpœna or process for appearance shall be served on the person to whom it is directed, at least ten days before the return thereof, by giving him a copy thereof, or by leaving a copy thereof at the dwelling house or usual place of abode of the defendant, with some person of the age of ten years or upwards, to whom the nature of such process shall be explained.

When plaintiff may enter rule to plead; within what time defendant to plead or bill be taken as confessed.

SEC. 17. On the return of a subpœna "served," by the sheriff or othe proper officer, the complainant may enter an order with the clerk of the proper court, requiring the defendant, if a resident of the county, to file his plea, answer, or demurrer, by a day certain, to be not less than thirty days from the date of such order; and, if not a resident, by a day certain, to be not less than ninety days from the date of such order; and if the defendant shall not file his plea, answer, or demurrer, within the time limited by such order, then the complainant may enter an order with the clerk that the bill of the complainant may be taken as confessed against the defendant in such order named: Provided, however, that the court or judge, in vacation, may, upon good cause shown by the affidavit of the defendant, or his solicitor, enlarge the time for answering to a period, not exceeding in the whole ninety days from the entry of the original order. If the defendant shall not file his plea, answer, or demurrer, within the time limited by the court or judge at his chambers, then said court or judge may, at their discretion, render a decree thereon, or order the complainant to prove the allegations of his bill, or examine the complainant, on oath, touching the allegations of such bill, and such decree shall then be made as the court or judge shall think fit.

Judge may enlarge time to answer, &c.

Proceedings against absent defendants, &c.

SEC. 18. In case of a bill filed against any defendant against whom a subpœna or process to appear shall issue, and such defendant shall not cause his appearance to be entered in such suit, as, according to the rules of such court, the same ought to be entered in case such process had been duly served, and it shall be made to appear by affidavit or otherwise, to the satisfaction of the judge, that such defendant is out of the state, or cannot, upon inquiry, be found therein, or that he conceals himself within this state, every such defendant shall be deemed, and taken to be, an absent defendant, and thereupon the judge may by order direct such absent defendant to appear, plead, answer, or demur, to the complainant's bill, at a certain day therein to be named, not less than three nor more than six months from the date of such order; which order shall, within twenty days thereafter, be personally served on such defendant, by a delivery of a copy thereof to him, or be published in one or more of the newspapers printed in this state, for six weeks successively, at least once in each week, and which said order shall also be published, or served in any other manner that the judge may see proper in said order to direct; and in case such absent defendant shall not appear, plead, answer, or demur within the time limited, or within some future time to be allowed by the judge, if he shall think proper, and on proof of personal service, or of the publication of such order or orders, as aforesaid, and of the performance of the directions contained in said order or orders, to the satisfaction of the judge, the judge may order and direct that the complainant's bill be taken as confessed against such absent defendant, so failing to plead, answer, or demur, or the court may proceed as directed in the seventeenth section of this chapter.

When complainant may reply.

SEC. 19. When the complainant conceives the plea of the defendant to be good, though not true, he may reply to and take issue thereon, and proceed as in case of an answer.

When answer and demurrer filed, answer to be first disposed of.

SEC. 20. If the defendant file a demurrer and answer, the complainant shall not proceed on the answer, till the demurrer has been argued or disposed of.

Proceedings when plea or demurrer overruled.

SEC. 21. If the plea or demurrer be overruled, no other plea or demurrer shall be thereafter received; but in such case the defendant shall file his answer to complainant's bill, in such time as the court or judge at his chambers may direct, and if he fail to do so, the said bill shall be taken as confessed, and the said court shall thereupon proceed as directed in the seventeenth section of this chapter.

Who to pay costs in such cases.

SEC. 22. If the plea or demurrer of the defendant be allowed, the complainant shall pay costs, and if overruled, the defendant shall pay costs.

Exceptions to answer to be referred, &c.

SEC. 23. When exceptions shall be filed to an answer, a rule may be entered of course with the clerk, either in term time or vacation, to refer the same to a proper officer of court, who shall decide and report upon them within thirty days after they are filed; but an appeal from such report may be allowed to the court, who shall hear and determine the same at the next term.

Who to pay costs in such case.

SEC. 24. The complainant, if his exceptions are overruled, shall pay costs to the defendant; and the defendant, if his answer be adjudged insufficient, shall pay costs to the complainant.

Pleadings when cross bill filed.

SEC. 25. If a cross bill be filed by the defendant, he shall answer to the bill of complaint before the complainant shall be required to put in his answer to such cross bill.

Before whom defendant may swear to answer.

SEC. 26. The defendant may swear to his answer before any person authorized to administer oaths.

Rules may be entered at any time by consent of parties.

SEC. 27. All rules, common or special, by consent of the parties or their solicitors, shall be entered of course with the clerk, whether in term time or vacation.

Amendments how made.

SEC. 28. All proper amendments shall be made with or without costs, and on such equitable terms as the court may direct.

CHAPTER 81.

When cause deemed at issue.

Sec. 29. Every cause in a court of chancery shall be deemed to be at issue on filing a replication; and it shall not be necessary to issue a subpœna or enter a rule to rejoin.

Complainant compelled to answer interrogatories on oath, &c.

Sec. 30. The defendant in chancery, after he shall have filed his answer, may exhibit interrogatories to the complainant, which shall be answered by him upon oath; and if the complainant shall not answer such interrogatories within the time appointed by the court, he shall be in contempt, and his bill shall be dismissed with costs.

Issue of facts may be tried by jury.

Sec. 31. If there be an issue of facts which shall render the introduction of a jury necessary, the court may direct an issue for the trial of the same, and the verdict shall be entered of record, and may be used on the hearing of the cause.

Bill to be dismissed, if complainant does not attend hearing.

Sec. 32. If the complainant shall not attend at the time appointed for the hearing of the cause, his bill shall be dismissed with costs.

Proceedings: when defendant does not attend hearing.

Sec. 33. If the defendant shall not attend at the time appointed for the hearing of the cause, the bill, answer, replication, documents and proofs, shall be read, the witnesses examined, and the court shall thereupon make such decree as they shall think equitable and just, or dismiss the complainant's bill.

Person having the possession of land may institute suit, against claimant.

Sec. 34. Any person having the possession and legal title to land, may institute a suit against any other person setting up a claim thereto; and if the claimant shall be able to substantiate his title to such land, the defendant shall be decreed to release to the complainant all claim thereto, and to pay costs, unless the defendant shall, by his answer, disclaim all title to such land, and give a release to the complainant, in which case the defendant shall be entitled to costs, except the court, on a hearing of the cause, shall otherwise order or decree.

Proceedings by person owning lands on meandered river against person obstructing flow of water.

Sec. 35. A purchaser from the United States, his heirs, assigns, or grantees, as the case may be, of land lying on a meandered river, may proceed in the first instance, by injunction against any other person or persons illegally obstructing the flow of water of such river over land lying between the meander line and middle of such river, in cases where such person or persons shall have no legal or equitable right or title to such land so lying between such meander line and the middle of such river.

When complainant to give bond in case of decree against absent defendant.

Sec. 36. In cases where a decree shall be made upon any bill in equity against an absent defendant, the court, before issuing process to compel the performance of such decree against such absent defendant, may require the complainant to give bond, with such security and in such sum as it may direct, to abide such decree or order touching the restitution of the property of such absent defendant, or the re-payment of any sum of money which the complainant may receive by virtue of such decree, but which shall afterwards be made to appear, as hereafter provided, not to have been due to him; and in case no security shall be given, no process or execution shall issue to compel the performance of the decree so made against such absent defendant; but the property of such absent defendant may, by order of the court, be sequestered under the direction of the court, to abide such order as it may think just and proper respecting the same. In case any such

When and how absent defendant may be heard on the matter of a decree against him.

absent defendant against whom a decree shall be made as aforesaid, his heirs, devisees, executors, administrators or assigns, as the case may require, shall, within six months after notice be given to him of such decree, or within three years after such decree shall have been made if no notice as aforesaid shall have been given, petition the court touching the matter of such decree, and pay, or secure or cause to be paid, such costs as the court may think reasonable to order and direct, then and in such case the person aforesaid so petitioning, may be permitted to appear and answer the complainant's bill, and thereupon such proceedings shall be had as if such absent defendant had appeared in due season and no decree had been made; or such absent defendant may, within the times aforesaid, file his bill of complaint in the said court for an account and settlement of the amount which was really due and owing to the complainant at the time of the decree, and to compel the said complainant to refund and repay what he may have wrongfully recovered and received, together with the interest from the time of the receipt thereof, with costs of suit, the former decree against such absent defendant notwithstanding; but in case no petition shall be presented or bill filed as before provided for, within six months from the time notice as aforesaid shall be given, due proof thereof being made, or within three years from the date of the decree, the decree shall be adjudged to be confirmed, which confirmation shall have relation to the time of making such decree; and the decree shall be executed and performed as in cases where the defendant had duly appeared.

Effect of final decree.

SEC. 37. A final decree of a court of chancery shall have the same operation, force and effect, from the time of signing the same, as a judgment at law.

Decree need not be enrolled, but papers, &c., to be filed, and copy of decree signed by court annexed.

SEC. 38. It shall not be necessary to enrol any decree or dismission in a court of chancery, but immediately after any decree shall have been pronounced, the bill, answer, and all other proceedings, in the cause in which such decree shall be had, shall be attached together by the clerk of the court, and filed in his office, together with a fair engrossed copy of such decree or dismission, and also the report and decretal orders therein, but without any recital of the bill, answer or pleadings, and after the same is signed by the court, shall annex it to the bill, answer and pleadings, which shall be of like effect as if the same had been enrolled.

Title to land may be passed by decree.

SEC. 39. A court of chancery shall have power to pass the title to real estate, by a decree, without any other act to be done on the part of the defendant, when in their judgment, it shall be the proper mode to carry their decrees into effect; and such decree being recorded in the records of the register of deeds of the county where such real estate is situated, shall while in force, be as effectual to transfer the same as the deed of the defendant.

When receiver may be appointed.

SEC. 40. No receiver shall ever be appointed in any cause commenced or pending in chancery until after notice given to the adverse party, nor until after answer filed in any case, except in cases coming strictly within the rules of chancery proceedings.

Defendant shall answer bill charging him with fraud.

SEC. 41. A defendant shall be compelled to answer any bill in chancery, where by law a bill may now be filed, charging the defendant with being a party to any conveyance or assignment of any estate or interest in lands, goods or things in action; or any rents or profits arising therefrom, or to any charge on any such estate, interest, rents or profits made or created, with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, or where the defendant shall be charged with any fraud whatever, affecting the right of property of others.

Such answer not evidence on criminal charge.

Sec. 42. No such answer shall be read in evidence against any party thereto on any complaint, on the trial of any indictment for the fraud charged in such bill.

When supreme court may make rules as to certain proceedings in chancery.

Sec. 43. The supreme court aforesaid may from time to time, make rules for proceeding in taking a bill as confessed, in every case, not otherwise provided for by law; and also for the proceedings necessary to entitle either party to a decree or order of such court against the opposite party, by default.

Court may make or alter rules and practice.

Sec. 44. It shall be lawful for the court, from time to time, to make, alter or amend, or revoke any rule or practice, so as to obviate doubts, advance justice and expedite suits in the said court, so that the same be not contrary to the provisions of this chapter.

When order of reference may be made.

Sec. 45. It shall be in the power of any judge, in vacation, to make orders of reference to a proper officer, in any cause depending in chancery, which is ready for a reference, before the final hearing of the same: Provided, that the party applying for such reference shall give ten days notice to the opposite party, or his solicitor, of the time and place, and the judge before whom he means to make a motion for such reference.

Decrees and orders, how enforced.

Sec. 46. Either of the courts aforesaid, sitting as a court of chancery, shall have power to enforce their decrees and orders by attachment, sequestration, or by such final process against the goods, chattels, lands and tenements, or against the person of any defendant, as may be had on a judgment at law; and such process shall be obeyed, executed and returned by the sheriff, or other officer to whom the same shall be directed, in like manner, and under the same penalties as is provided in cases of process issuing from a court at law.

Of Proceedings in relation to the Conveyance of lands by infants, and the Sale and disposition of their estates.

When infant seized of lands compelled to convey.

Sec. 47. Whenever any infant shall be seized or possessed of any lands, by way of mortgage, or in trust only for others, the court, on the petition of the guardian of such infant, or of any person in any way interested, may compel such infant to convey and assure such lands to any other person, in such manner as the said court shall direct.

Conveyance to be valid.

Sec. 48. Every conveyance or assurance, made pursuant to such order, shall be as good and effectual, in the law, as if the same were made by such infant when of lawful age.

Court may compel performance of contract.

Sec. 49. The court of chancery shall have power to decree and compel a specific performance, by any infant heir or other person, of any bargain, contract or agreement, made by any party who may die before the peformance thereof, on petition of the executors or administrators of the estate of the deceased, or of any person interested in such bargain, contract or agreement, and on hearing all parties concerned, and being satisfied that the specific performance of such bargain, contract or agreement ought to be decreed or compelled.

Infant may apply to sell property.

SEC. 50. Any infant seized of any real estate, or entitled to any term for years in any lands, may, by his next friend, or by his guardian, apply to the court, for the sale or disposition of his property, in the manner hereinafter directed.

Guardian to be appointed.

SEC. 51. On such application the court shall appoint one or more suitable persons guardians of such infant, in relation to the proceedings on such application.

To give bond.

SEC. 52. The guardians shall give bond to the infant, to be filed with the court, in such penalty, with such sureties, and in such form as the court shall direct, conditioned for the faithful performance of the trust reposed, for the paying over, investing and accounting for all moneys that shall be received by such guardians, according to the order of any court having authority to give directions in the premises, and for the observance of the orders and directions of the court, in relation to the said trust.

When bond to be prosecuted.

SEC. 53. If such bond be forfeited, the court shall direct it to be prosected, for the benefit of the party injured.

Manner of proceeding.

SEC. 54. Upon the filing of such bond, the court may proceed in a summary manner, to inquire into the merits of such application.

Court may order letting, or sale of infant's property

SEC. 55. Whenever it shall appear, satisfactorily, that a disposition of any part of the real estate of such infant, or of his interest in any term for years, is necessary and proper, either for the support and maintenance of such infant or for his education ; or that the interest of such infant requires, or will be substantially promoted by such disposition, on account of any part of his said property being exposed to waste and dilapidation, or on account of its being wholly unproductive, or for any other peculiar reasons or circumstances, the court may order the letting for a term of years, the sale or other disposition of such real estate or interest to be made, by such guardian or guardians, so appointed, in such manner and with such restrictions as shall be deemed expedient.

Limitation of last section.

SEC. 56. But no real estate, or term for years, shall be sold, leased or disposed of, in any manner, against the provisions of any last will, or of any conveyance, by which such estate or term was devised or granted to such infant.

Agreement of sale to be reported to court, &c.

SEC. 57. Upon an agreement for a sale, leasing or other disposition of such property being made, in pursuance of such order, the same shall be reported to the court, on the oath of the guardian making the same ; and if it be confirmed, a conveyance shall be executed under the directions of the court.

Sale, &c., by guardian, effectual.

SEC. 58. All sales, leases, dispositions and conveyances, made in good faith by the guardian, in pursuance of such orders, when so confirmed, shall be valid and effectual, as if made by such infant when of full age.

Infant deemed ward of court, &c.

SEC. 59. From the time of such application to the court, the infant shall be considered a ward of the court, so far as relates to such property, its proceeds and income ; and the court shall make order for the application and disposition of the proceeds of such property, and for the investment of the surplus belonging to such infant, so as to secure the same for the benefit of such infant; and shall direct a return of such investment and disposition to be made, on oath as soon as may be, and shall require accounts to be rendered periodically, by any guardian or other person who may be entrusted with the disposition of the income of such proceeds.

Effect of sale.

SEC. 60. No sale made as aforesaid, of the real estate of any infant, shall give to such infant any other or greater interest or estate in the proceeds of such sale than he had in the estate so sold; but the said proceeds shall be deemed real estate, of the same nature as the property sold.

Power of court when estate of infant subject to dower, &c.

SEC. 61. If the real estate of any infant, or any part of it, shall be subject to dower, and the person entitled thereto shall consent in writing to accept of a gross sum in lieu of such dower, or the permanent investment of a reasonable sum, in such manner as that the interest thereof be made payable to the person entitled to the said dower during life, the court may direct the payment of such sum in gross, or the investment of such sum as shall be deemed reasonable, and shall be acceptable to the person entitled to such dower in manner aforesaid; which sums so paid or invested, shall be taken out of the proceeds of the sale of the real estate of such infant.

Release of dower to be made.

SEC. 62. Before any such sum shall be paid, or such investment made, the court shall be satisfied that an effectual release of such right of dower has been executed.

Of Proceedings relative to Insane Persons and Habitual Drunkards, and the Sale and Disposition of their Property.

Circuit judge to have care of insane persons, &c.

SEC. 63. The circuit judge shall have the care and custody of all insane persons, or persons who shall be incapable of conducting their own affairs, in consequence of habitual drunkenness, and of their real and personal estates, so that the same shall not be wasted or destroyed; and shall provide for their safe keeping and maintenance, and for the maintenance of their families and the education of their children, out of their personal estates, and the rents and profits of their real estates respectively.

Application to court in case of drunkards.

SEC. 64. Whenever the overseers of the poor of any town or county in this state, discover any person resident therein to be an habitual drunkard, having property to the amount of two hundred and fifty dollars, which may be endangered by means of such drunkenness, it shall be their duty to make application to the court for the exercise of its powers and jurisdiction.

Proceedings in such case.

SEC. 65. On the presenting of such application, it shall be referred to a court commissioner, or to the clerk of the court, to inquire into and report upon the matters therein contained; whose duty it shall be to examine into the truth of the representations made, to hear all parties interested in such property, and to report thereon with all convenient speed.

Court may order sale, &c., of estate to pay debts.

SEC. 66. If upon the coming in of the report and an examination of the matter, it shall appear to the court that the personal estate of the insane person, or other person above specified, is not sufficient for the payment of his debts, and that the same has been applied to that purpose as far as the circumstances of the case rendered proper, an order shall be entered, directing the mortgage, leasing or sale of the whole, or such part of the said real estate as may be necessary to discharge the said debts.

Same for maintenance, &c.

SEC. 67. When the personal property, and the rents, profits and income of the real estate of any such insane person, or other person above specified, shall be insufficient for his maintenance, or that of his family, or for the education of his children, a similar application may be made by his committee or guardians, to the judge or to the court having jurisdiction, for authority to mortgage or sell the whole, or so much of the real estate as shall be necessary for that purpose; upon which, the same reference and proceedings shall be had, and a like order shall be entered, as herein before directed.

Disposition of proceeds of sale.

SEC. 68. In the case last mentioned, the court shall direct the manner in which the proceeds of such sale shall be secured, and the income or produce thereof appropriated.

Sale and conveyance when executed.

SEC. 69. The court shall give such orders respecting the time and manner of any sale herein authorized, as shall be deemed proper; and no conveyance in pursuance of any sale shall be executed until the sale shall have been reported on the oath of the committee appointed for that purpose, and confirmed by the court directing the same.

Proceedings when insane person seized of estate as trustee, &c.

SEC. 70. Whenever any such insane person, or other person above specified, shall be seized or possessed of any real estate, by way of mortgage, or as a trustee for others in any manner, his committee or guardian may apply to the court for authority to convey and assure such real estate to any other person entitled to such conveyance or assurance, in such manner as the court shall direct; upon which a reference, and the like proceedings shall be had, as in the case of an application to sell real estate as aforesaid; and the court, upon hearing all the parties interested, may order such conveyance or assurance to be made: on the application of any person entitled to such conveyance or assurance, by bill or petition, the committee or guardian may be compelled by the court of chancery, on a hearing of all parties interested, to execute such conveyance or assurance.

Conveyance by order of court valid.

SEC. 71. Every conveyance, mortgage, lease and assurance, made under the order of the court pursuant to the provisions of this chapter, shall be as valid and effectual as if the same had been executed by such insane person, or other person above specified, when of sound memory and understanding.

When performance of contracts by lunatic, &c., compelled.

SEC. 72. The court shall have authority to decree and compel the specific performance of any bargain, contract or agreement, which may have been made by any lunatic or other person specified in the sixty-third section of this chapter, while such lunatic or other person was capable to contract; and to direct the committee of such person to do and execute all necessary conveyances and acts for that purpose.

Limitation of lease of estate of insane person, &c.

SEC. 73. The real estate of any insane person, or person of unsound mind, or person incapable of conducting his affairs in consequence of habitual drunkenness, shall not be leased for more than five years, or mortgaged or aliened or disposed of, otherwise than is herein directed.

SEC. 74. In case any insane person, or other such person, shall be restored to his right mind, and become capable of conducting his affairs, his real and personal estate shall be restored to him.

When estate of lunatic restored.

SEC. 75. In case of the death of any insane person, or person of unsound mind, or person incapable of conducting his affairs during such state of incapacity, the power of any committee or guardian appointed under this chapter, shall cease, and his real estate shall descend to his heirs, and his personal estate be distributed among his next of kin, in the same manner as if he had been of sound mind and memory.

On death of insane person, estate how disposed of.

Of the Powers and Proceedings of Courts in Chancery, on bills for the Foreclosure or Satisfaction of Mortgages.

SEC. 76. Whenever a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage, and the costs of suit.

When court may decree sale of mortgaged premises.

SEC. 77. When a bill shall be filed for the satisfaction of a mortgage, the court shall not only have power to decree and compel the delivery of the possession of the mortgaged premises to the purchaser thereof, but on the coming in of the report of sale, the court shall also have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied after a sale of the premises, in the cases in which such balance is recoverable at law; and for that purpose, may issue the necessary executions as in other cases against other property of the mortgagor.

When may decree payment of balance due, and that execution issue.

SEC. 78. After such bill shall be filed, while the same is pending, and after a decree rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court of chancery.

No proceedings at law after bill is filed.

SEC. 79. If the mortgage debt be secured by the obligation or other evidence of debt hereafter executed, of any other person besides the mortgagor, the complainant may make such person a party to the bill, and the court may decree payment of the balance of such debt remaining unsatisfied, after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

When other person than mortgagor may be made party.

SEC. 80. Upon filing a bill for the foreclosure or satisfaction of a mortgage, the complainant shall state therein, whether any proceedings have been had at law, for the recovery of the debt secured thereby, or any part thereof; and whether such debt or any part thereof, has been collected.

Bill to foreclose, &c., what to state.

SEC. 81. If it appear that any judgment has been obtained in a suit at law, for the moneys demanded by such bill or any part thereof, no proceedings shall be had in such case, unless to an execution against the property of the defendant, in such judgment, the sheriff shall have returned that the said execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution, except the mortgaged premises.

Proceedings when judgment obtained for part of moneys, &c.

CHAPTER 84.

Sales, by whom made.

SEC. 82. All sales of mortgaged premises under the decree of the court, shall be made by the sheriff, in the county where the premises, or some part of them, are situated, unless otherwise directed in the decree of sale.

Deeds, by whom made, and effect of.

SEC. 83. Deeds shall thereupon be executed by such sheriff, which shall vest in the purchaser the same estate, and no other or greater than would have vested in the mortgagee, if the equity of redemption had been foreclosed; and such deeds shall be as valid as if the same were executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and against all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all claiming under such heirs.

Proceeds of sale, how applied.

SEC. 84. The proceeds of every sale made under the decree of a court of chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded; and if there shall be any surplus it shall be brought into court for the use of the defendant, or of the person who may be entitled thereto, subject to the order of the court.

When surplus put out at interest.

SEC. 85. If such surplus, or part thereof, shall remain in the said court, for the term of three months without being applied for, the judge shall direct the same to be put out at interest, under the direction of the court, for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of such court.

When part only of debt is due, how bill may be dismissed.

SEC. 86. Whenever a bill shall be filed for the satisfaction or foreclosure of any mortgage, upon which there shall be due any interest, or any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the bill shall be dismissed, upon the defendant's bringing into court, at any time before the decree of sale, the principal and interest due, with costs.

When proceedings stayed, if defendant brings money into court.

SEC. 87. If after a decree for sale entered against a defendant in such case, he shall bring into court the principal and interest due, with the costs, the proceedings in the suit shall be stayed; but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court, upon a subsequent default in the payment of any portion or installment of the principal, or of any interest thereafter to grow due.

Order for reference; court to direct part of premises to be sold.

SEC. 88. If the defendant shall not bring into court the amount due, with costs, or if for any other cause, a decree shall pass for the complainant, the court shall direct a reference to a proper officer, to ascertain and report the situation of the mortgaged premises; and if it shall appear that the same can be sold in parcels, without injury to the interests of the parties, the decree shall direct so much of the said premises to be sold, as will be sufficient to pay the amount then due on such mortgage, with costs; and such decree shall remain as security for any subsequent default

SEC. 89. If in the case mentioned in the preceding section, there shall be any default subsequent to such decree, in the payment of any portion or installment of the principal or of any interest due upon such mortgage, the court may, upon the petition of the complainant, by a further order founded upon such first decree, direct a sale of so much of the mortgaged premises to be made under the said decree, as will be sufficient to satisfy the amount so due, with the costs of such petition and the subsequent proceedings thereon; and the same proceedings shall be had, as often as a default shall happen.

When may order whole of premises sold.

SEC. 90. If in any of the foregoing cases, it shall appear to the court, that the mortgaged premises are so situated, that the sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole accordingly.

Proceeds of sale, how disposed of.

SEC. 91. In such case, the proceeds of such sale shall be applied as well to the interest, portion or installment of the principal due, as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sale; and if such residue do not bear interest, then the court may direct the same to be paid, with a deduction of the rate of legal interest, for the time during which such residue shall not be due and payable; or may direct the balance of the proceeds of such sale, after paying the sum due, with costs, to be put out at interest for the benefit of the complainant, to be paid to him as the installments or portions of the principal or the interest may become due, and the surplus for the benefit of the defendant, his representatives or assigns, to be paid to them on the order of the court.

Of Writs of ne exeat.

Writ of ne exeat, when granted.

SEC. 92. The courts aforesaid, or any judge thereof in vacation, may grant writs of ne exeat to prevent any person from going out of the state until he shall give security.

Ib.

SEC. 93. No writ of ne exeat shall be granted but upon bill or petition filed, and affidavit of the complainant or some indifferent witness, of the truth thereof; and the court or judge granting such writ shall direct to be endorsed thereon the penalty of the bond and security to be given by the defendant.

When discharged.

SEC. 94. If the defendant shall, by answer or otherwise, satisfy the court or judge granting such writ of ne exeat, that there is no reason for his restraint, or shall give security for the performance of whatever decree may be made in the premises, the writ may be discharged.

Of the granting of Injunctions, staying proceedings at law, &c.

Writs of injunction when granted.

SEC. 95. The courts aforesaid, or any judge thereof in vacation, shall have power to grant writs of injunction to stay waste, or to stay proceedings at law; but no writ of injunction shall issue but upon bill filed, and an affidavit of the truth of the grounds of the application, either by the party applying for the injunction or some indifferent witness.

When returnable.

SEC. 96. All writs of injunction granted by a judge in vacation, shall be made returnable to the next term of the court to which the same is properly returnable, and the court shall proceed therein according to the course of proceeding in courts of equity.

Injunction to stay trial, when not to issue.

SEC. 97. No injunction shall be issued to stay the trial of any personal action at issue in a court of law, until the party applying therefor shall execute a bond with one or more sufficient sureties to

7

the plaintiff in such action at law, in such sum as the judge or master allowing the injunction shall direct, conditioned for the payment to the said plaintiff and his legal representatives, of all moneys which may be recovered by such plaintiff or his representatives, or the collection of which may be stayed by such injunction, in such action at law for debt or damages and for costs therein; and also for the payment of such costs as may be awarded to them in the court of chancery in the suit in which the injunction shall issue.

What necessary to obtain injunction, &c., to stay proceedings before judgment.

SEC. 98. No injunction shall be issued to stay proceedings at law in any personal action after verdict and before judgment thereupon, unless a sum of money, equal to the amount for which the verdict was given and the costs of suit, shall be first deposited with the court of chancery by the party applying for such injunction, or a bond for the payment thereof, shall be given as herein after directed.

Id. after judgment.

SEC. 99. No injunction shall issue to stay proceedings at law in any personal action after judgment, unless,

1. A sum of money equal to the full amount of such judgment, including costs, shall be first deposited by the party applying for such injunction, or a bond in lieu thereof, be given as herein after directed; and,

2. Unless such party, in addition to such deposite, shall also execute a bond, with one or more sufficient sureties, to the plaintiff in the said judgment, in such sum as the judge or officer allowing the injunction shall direct, conditioned for the payment to the said plaintiff and his legal representatives of all such damages and costs as may be awarded to them by the court at the final hearing of the cause.

Money deposited in chancery, how disposed of.

SEC. 100. If after a verdict or judgment at law any moneys shall be deposited in the court of chancery, pursuant to either of the two last sections, the same may be paid on the order of the court, to the plaintiff in such action at law, upon his executing a bond to the State of Wisconsin in a penalty double the amount so deposited, with such sureties as the court shall approve, conditioned that such plaintiff will pay to the clerk of the court in which such order shall be made, the moneys which he shall so receive, and the interest thereon, or any part thereof, according to any order or decree of the court of chancery that may be made in relation to the same.

Id.

SEC. 101. Whenever the moneys so deposited shall be paid to the plaintiff in the action at law, if the final decision of the cause in chancery be against the party obtaining the injunction, the judge may order any bond that may have been given by such plaintiff to be cancelled, and shall continue the injunction to stay the collection of the judgment at law, or shall compel the plaintiff therein to cause such judgment to be satisfied and discharged of record.

Injunction to stay proceedings after verdict.

SEC. 102. No injunction shall issue to stay proceedings at law in any action for the recovery of lands, or of the possession thereof, after verdict, unless the party applying therefor shall execute a bond with one or more sureties to the plaintiff in such action at law, in such sum as the judge or officer allowing the injunction shall direct, conditioned for the payment to the plaintiff in such action, and his legal representatives, of all such damages and costs as may be awarded to them in case of a decision against the party obtaining such injunction.

Damages on dissolution, how ascertained.

Sec. 103. The damages to be paid upon the dissolution of such injunction shall be ascertained by reference to a proper officer, and shall include not only the reasonable rents and profits of the land recovered by such verdict, but all waste committed thereon after the granting of the injunction.

Deposite may be dispensed with, and bond executed, &c.

Sec. 104. The judge shall have power to dispense with any deposite of moneys required by either of the preceding sections, and in lieu thereof to direct the execution of a bond with sureties, conditioned to pay the amount so required to be deposited, whenever ordered by the court; or if a bond is already required in addition to such deposite, then to direct the enlargement of the penalty and condition of such bond as may be requisite. But whenever such deposite shall be dispensed with, the bond so substituted or enlarged shall be executed by at least two sufficient sureties.

When both may be dispensed with.

Sec. 105. Whenever an injunction shall be applied for to stay proceedings at law in any action after judgment or verdict on the ground that such judgment or verdict was obtained by actual fraud, the judge shall have power to dispense with the deposite of any moneys or the execution of any bond.

Bond to be executed before injunction issued to stay judgment.

Damages if injunction dissolved.

When errors to be released before injunction issues.

Sec. 106. Whenever a judgment at law shall be enjoined, before any writ of injunction shall be issued, the complainant shall give a bond to the defendant in a penalty of double the amount of the judgment at law to be enjoined, with good and sufficient security, conditioned as required by law, and particularly to pay to the defendant the amount of such judgment, in case the injunction shall be dissolved; and in all cases where a judgment at law has been enjoined and the injunction shall be dissolved, the court shall award, upon the dissolution of such injunction, ten per cent damages to the defendant upon the sum enjoined, exclusive of interest and costs. No injunction shall be granted to stay any proceedings at law, until the complainant shall release all errors at law in the proceedings prayed to be enjoined; and in all cases a confession of judgment shall amount to a release of errors.

Sufficiency of sureties, how ascertained.

Sec. 107. The sufficiency of the sureties in any bond executed under the provisions of this chapter shall be ascertained by the affidavit of each surety, stating that he is a householder resident within this state, and that he is worth a sum equal to the amount in which the bond shall have been required, over and above all debts and demands against him. Every such affidavit shall be annexed to or indorsed on the bond.

Bond to be filed before injunction issued.

Sec. 108. Whenever a bond shall be required to be executed pursuant to the provisions of this chapter, prior to the issuing of an injunction, the same, with the affidavit above required, shall be filed with the clerk of the court before the sealing and delivery of the injunction.

To whom bond to be delivered.

Sec. 109. The judge shall direct the delivery of any bond executed under the provisions of this chapter to the person entitled to the benefit thereof for prosecution, whenever the condition of such bond shall be broken or the circumstances of the case shall require such delivery.

Of Appeals to the Supreme Court.

Appeals when to be made.

Sec. 110. When any person, being complainant or defendant, shall think himself aggrieved by the final order or decree of the judge of a circuit court, sitting as a court of chancery, such person may enter an appeal within two months to the supreme court, from such decree or final order, and when any person being complainant or defendant shall think himself aggrieved by any interlocutory decree or any order previous to a final order or decree, he may enter an appeal therefrom to the supreme court within fifteen days from the time of entering such decree or making such order.

Bond to be executed; court may award damages.

Sec. 111. The party appealing in either of the above specified cases, shall give bond to the adverse party, with good security, in such sum as the judge of the circuit court shall order, conditioned to pay, satisfy and perform the order or decree of the supreme court, and all costs, in case the decree or final order, or interlocutory decree or previous order as the case may be of the circuit court shall be affirmed; and if the final order or decree of the circuit court shall be affirmed, the supreme court may award such damages against the appellant as they may think proper, not exceeding twenty-five per cent on the amount of the money or other subject matter of such decree.

Proceedings in supreme court.

Sec. 112. On the hearing of any such appeal, the supreme court shall annul, affirm, modify or alter the order or decree appealed from or make any other order in the cause as justice under the law and rules of chancery proceedings may require, and may remit the cause to the circuit court, wherein the order or decree appealed from was made, for further proceedings, or may give any other direction in the cause as the circumstances of the case may require.

When supreme court may award damages.

Sec. 113. The supreme court shall have power in any case in which they are satisfied that an appeal has been taken from an intelocutory or any other order or decree, except a final one, for the purpose of delay or on any frivolous pretence, to award such damages to the adverse party as they may, under the circumstances deem propr, the criterion for which damages shall be prescribed by rule.

CHAPTER 85.

OF PROBATE COURTS.

Judges of probate to hold courts, and may adjourn the same.

Section 1. Every judge of probate shall hold a probate court in his county, at the times and places established by law, and may adjourn the same from time to time as occasion may require.

To be a court of record, and proceedings to be recorded, &c.

Sec. 2. Every probate court shall be a court of record, and have a seal; and each judge of probate shall keep a true and fair record of each order, sentence and decree of the court, and of all wills proved therein, with the probate thereof, of all letters testamentary and of administration, and of all other things proper to be recorded; and, on the legal fees being paid, shall give true copies of the files, records and proceedings of the court certified by him under the seal of such court.

Effect of attested copies as evidence.

Sec. 3. All copies so attested, shall be legal evidence in all the courts of law and equity in this state; and certificates of probate of administration, or of guardianship, attested by the judge of probate, may be given in evidence, and have the same effect as any probate, letter of administration, or letter testamentary, or of guardianship, made out in due form of law.

Court always open for certain purposes.

Sec. 4. The probate court shall be deemed open at all times for the transaction of any ordinary business which may be necessary therein, when previous notice is not required to be given to the person interested.

Powers and jurisdiction of judges of probate.

Sec. 5. The judge of probate for each county shall have power to take the probate of wills, and to grant letters testamentary and of administration on the estate of all persons deceased, who were at the time of their decease inhabitants of, or residents in the same county, and of all who shall die without the state, leaving any estate within such county to be administered; and to appoint guardians to minors and others in the cases prescribed by law, and shall have and exercise all such other powers and jurisdiction as are or may be conferred by law.

Ib.

Sec. 6. The judge of probate shall have jurisdiction of all matters relating to the settlement of the estates of such deceased persons, and of such minors and others under guardianship.

Power of judge in administering oaths.

Sec. 7. The judge of probate shall have power to administer all oaths necessary in the transaction of business before the probate court, and all oaths required by law to be administered to persons executing trusts under the appointment of such court.

Process.

Sec. 8. The several judges of probate shall have power to issue all warrants and processes in conformity to the rules of law, which may be necessary to compel the attendance of witnesses residing in any part of this state, or to carry into effect any order, sentence or decree of the probate courts, or the powers granted them by law.

Orders, &c., how inforced.

Sec. 9. If any person shall refuse or neglect to perform any order, sentence or decree of a probate court, such court may issue a warrant, directed to any sheriff, constable, or other proper officer in this state, requiring him to apprehend and imprison such person in the common jail of the county, until he shall perform such order, sentence or decree, or be delivered by due course of law.

Sheriffs, &c., to serve process issued by judge of probate.

Sec. 10. All sheriffs, deputy sheriffs, coroners and constables, within their respective counties, shall serve and execute all legal warrants and processes to them directed by any judge of probate.

Commissioners to take testimony.

Sec. 11. When a witness whose testimony is necessary to be used before any court of probate, shall reside out of this state, or by reason of age or bodily infirmity shall be unable to attend in person, the court may issue a commission to one or more competent persons to take the testimony of such witness; and depositions taken according to the provisions of law, for taking depositions to be used on the trial of civil causes, may be used on the trial of

CHAPTER 85

any question before the probate court, where such testimony may be proper.

Contempts, how punished.

SEC. 12. The judge of probate shall have power to keep order in his court, and to punish any contempt of his authority, in like manner as such contempt may be punished in the circuit court.

When jurisdiction not to be contested.

SEC. 13. The jurisdiction assumed in any case by a judge of probate, so far as it depends on the place of residence of any person, or the location of his estate, shall not be contested in any suit or proceeding whatever, except in an appeal from the probate court in the original case, or when the want of jurisdiction appears on the same record.

When court first taking cognizance to retain jurisdiction

SEC. 14. When a case shall be originally within the jurisdiction of the probate court of two or more counties, the court which shall first take cognizance thereof by the commencement of proceedings, shall retain the same throughout.

Presumption in favor of orders, &c., after twenty years.

SEC. 15. When the validity of any order or decree of a probate court shall be drawn in question in any other suit or proceeding, everything necessary to have been done or proved to render the order or decree valid, and which might have been proved by parol at the time of making the order or decree, and was not required to be recorded, shall, after twenty years from such time, be presumed to have been done or proved, unless the contrary appears on the same record.

When judge of circuit court to act as judge of probate.

SEC. 16. When a judge of probate, his wife or child, shall be an heir or legatee, or when such judge shall be an executor or administrator of a deceased person, he shall be deemed incapacitated for executing the duties of his office in relation to that estate; and the judge of the circuit court for the same county shall perform such duties.

Ib.

SEC. 17. When the judge, as creditor, or otherwise, shall be interested in any question to be decided by the court, he shall be deemed to be incapacitated for acting in the decision of that question, and the judge of the circuit court for the same county, in such case, shall perform the duties of judge of probate.

When judge of probate not to be employed as attorney, &c.

SEC. 18. No judge of probate shall be retained or employed as solicitor, attorney or counsel in any suit or matter which may depend on, or in any way relate to, any sentence or decree made or passed by him; nor shall he be solicitor, attorney or counsel for or against any executor, administrator or guardian appointed within his jurisdiction, in any suit brought by or against the executor, administrator or guardian, as such, nor in any suit relating to the official conduct or duty of such party.

Clerk, &c, in probate office not to be appraiser, &c, in certain cases.

SEC. 19. No clerk, or other person employed in the office of any probate court, shall be commissioner, appraiser, or divider of any estate, in any case that is within the jurisdiction of such court.

When oath may be administered by judge out of court, or by a justice of the peace, &c.

SEC. 20. When any executor, administrator, guardian or trustee, who is required to make oath to any account, is unable, by reason of sickness or otherwise, to attend personally in the probate court for that purpose, the judge may either proceed himself to administer the oath to the accountant, out of court, or may by his order, authorize any justice of the peace or notary public to administer it; and a certificate of the oath with the account, and the vouchers therewith, and the order, if any, shall be returned into the office of the judge of probate, and be there filed and recorded.

Other oaths may be taken by judge or justices, &c.

Sec. 21. All other oaths required to be taken, by executors, administrators, guardians and trustees, commissioners, appraisers and dividers of estates, or by any other persons, in relation to any proceeding in the probate court, may be administered either by the judge of probate, or by any justice of the peace, or notary public, and a certificate thereof, when taken out of the court, shall be returned into the probate court, and there be filed and recorded.

Certain warrants &c., may be revoked.

Sec. 22. Any warrant or commission, for the appraisement of any estate, for examining claims against estates, for partition of real estate, or for the assignment of dower, may be revoked by the judge of probate for sufficient cause, and the judge may thereupon issue a new commission, or proceed otherwise therein, as the circumstances of the case shall require.

Bonds when not deemed sufficient unless approved by judge, &c.

Sec. 23. No bond required by law to be given to the judge of probate, to be filed in his office, shall be deemed sufficient unless it shall have been examined and approved by the judge, and his approval thereof indorsed thereon in writing, and signed by him.

Appeals.

Sec. 24. In all cases not otherwise provided for, any person aggrieved by any order, sentence, decree or denial of a judge of probate, may appeal therefrom to the circuit court for the same county, by filing a notice thereof with the judge of probate within sixty days from the date of the act appealed from, with his reasons for such appeal, together with such bond as is required in the next section.

Bond on appeal.

Sec. 25. The party appealing shall, at the time of filing notice thereof, file with the judge of probate a bond to the adverse party, in such penalty, with such surety or sureties as the judge of probate shall approve, conditioned for the diligent prosecution of such appeal, and the payment of all such damages and costs as shall be awarded against him, in case he shall fail to obtain a reversal of the decision so appealed from.

Notice of appeal to adverse party.

Sec. 26. The appellant shall give notice of such appeal to the adverse party, with his reasons therefor, in such manner as the probate court shall direct, at least fourteen days before the same shall be entered in the circuit court.

Appellant to procure and file certified copy of record, &c.

Sec. 27. The person appealing shall procure and file in the circuit court to which the appeal is taken, a certified copy of the record or proceedings appealed from, of the notice of such appeal filed in the probate court, and the reasons for such appeal, together with evidence of the filing of the requisite bond, and that notice has been given to the adverse party according to the order of the probate court.

On filing copy of record, &c., circuit court to try question.

Sec. 28. When such certified copy shall have been filed in the circuit court, with the evidence of filing the requisite bond, and of giving notice as aforesaid, such court shall proceed to the trial and determination of the question according to the rules of law; and if there shall be any question of fact to be decided, issue may be joined thereon under the direction of the court, and a trial thereof had by jury.

When circuit court may allow appeal.

Sec. 29. If any person aggrieved by any act of the judge of probate, shall, from any cause, without default on his part, have omitted to claim or prosecute his appeal according to law, the circuit court, if it shall appear the justice requires a revision of the case, may on the petition of the party aggrieved, and upon such terms as it shall deem reasonable, allow an appeal to be taken and prosecuted with the same effect as if it had been done seasonably.

Notice of application to circuit court for allowance of appeal.

SEC. 30. No such appeal shall be allowed, without due notice to the party adversely interested, nor unless the petition therefor shall be filed within one year after the making of the decree or order complained of, except as provided in the following section.

Time for filing petition, when petitioner was without U. S., at the passing of the decree.

SEC. 31. If the petitioner shall be without the United States at the time of passing the decree or order, he may file his petition within three months after his return, provided it be done within two years after the act complained of.

Petition may be filed with clerk in vacation.

SEC. 32. The petition may, in all cases, be filed in the clerk's office in vacation, as well as in term time, and the clerk shall note upon it the time when it is filed.

Proceeding stayed by appeal.

SEC. 33. After an appeal is claimed, and notice thereof given at the probate office, all further proceedings in pusuance of the sentence, order, decree or denial appealed from, shall cease until the appeal shall be determined.

Powers of circuit court on appeal.

SEC. 34. The circuit court may reverse or affirm, in whole or in part, the sentence or act appealed from, and may make such order or decree thereon as the judge of probate ought to have made, and may remit the case to the probate court for further proceedings, or may take any other order therein, as law and justice shall require.

When circuit court to affirm decree, &c.

SEC. 35. If the appellant shall fail to prosecute his appeal with reasonable diligence, the circuit court, upon evidence that such appeal was taken, and on the motion of any person interested in the case shall affirm the decree or act appealed from, and may allow costs against the appellant.

Costs in contested cases.

SEC. 36. In all cases that shall be contested, either in the probate court or in the circuit court, such court may award costs to either party, in its discretion, to be paid by the other, or to be paid out of the estate which is the subject of the controversy, as justice and equity shall require.

Execution for costs.

SEC. 37. When costs are awarded to one party, to be paid by the other, the said courts, respectively, may issue execution therefor, in like manner as is practiced in the circuit courts in other cases.

Books to be furnished by county—blanks, &c, by judge.

SEC. 38. Each county shall provide all books necessary for keeping the records, in the office of the judge of probate; but all printed blanks, and other stationery, and all the incidental expenses of the office, shall be furnished and paid by the judge of probate.

Probate courts, when and where to be held.

SEC. 39. There shall be a probate court held in each county, at the county seat on the first Monday of each month, and on such other days as the judge of probate shall appoint; and in case any matter shall not be heard at the time appointed for hearing the same, such matter shall stand continued until the next stated term of the court, unless the parties interested otherwise agree.

Supreme court to make rules.

SEC. 40. The supreme court of this state shall have power, from time to time, to make uniform rules for regulating the proceedings in all the probate courts of the state, and to alter, amend or modify the same as it may judge necessary, in all cases not expressly provided for by law.

Seals of courts now in use.

Sec. 41. The seals of the several probate courts now used by them respectively, shall continue to be the seals of such courts, until others shall be provided according to law.

Notice of proceedings in certain cases to be given.

Sec. 42. When notice of any proceedings in a probate court shall be required by law, or be deemed necessary by the judge of probate, and the manner of giving the same shall not be directed by any statute, the judge of probate shall order notice of such proceedings to be given to all persons interested therein in such manner, and for such length of time as he shall deem reasonable.

Index of records in probate office.

Sec. 43. Each judge of probate shall make an alphabetical index to the records of proceedings in the probate court, and keep the same in his office.

CHAPTER 86.

OF COUNTY COURTS.

County courts established; where held.

Section 1. There shall be established in each of the counties of this state, organized for judicial purposes, a county court for such county, which shall be held at the county seat thereof, for the transaction of all business that may lawfully come before it. The qualified electors of each county, shall, on the first Monday of September, one thousand eight hundred and forty-nine, and once in every four years thereafter, elect a suitable person to the office of judge of said county, who shall be called the county judge, and hold his office for four years from the first day of January thereafter, and until his successor is elected and qualified to serve in his place.

County judge when elected; his term of office.

To be a court of record; its powers and jurisdiction.

Sec. 2. The county court shall be a court of record, with a clerk and seal, and shall have original jurisdiction concurrently with the circuit court to try and determine, according to law, all civil actions arising within the county for which such courts shall be held; and all transitory actions, although the same may not have arisen within the county, where the debt or damages demanded do not exceed the sum of five hundred dollars, (excepting actions of ejectment,) and exclusive appellate jurisdiction of all cases of appeal and certiorari from justices of the peace; such court shall also have full power and authority to enter judgments by confession, and to grant new trials, and by the consent of parties, to try any civil actions, without limitation as to amount.

To perform the duties of judges of probate.

Sec. 3. Such court shall have the powers and jurisdiction now by law conferred on judges of probate, and shall perform all of the duties of judges of probate, in the manner provided by law, and wherever the words "judge of probate" occur in any of the laws of this state, it shall be taken and construed to mean "judge of the county court."

Office of judge of probate abolished, &c.

Sec. 4. From and after the last day of December, one thousand eight hundred and forty-nine, the office of judge of probate shall be abolished, and the judges of probate of the several counties of this state shall be and hereby are required to deliver over to the judges of the county court of their respective counties, on the first day of January, one thousand eight hundred and fifty, all books, records, and papers, belonging to their said office; and the said judges of the county court, from and after that day, shall be invested with full and exclusive probate powers.

Powers of county courts.

SEC. 5. The county courts shall have full power and authority to issue all legal process, proper and necessary to carry into effect the jurisdiction given them by law, and to carry out such jurisdiction, shall have and exercise all the powers usually possessed by courts of record, under the common law, under the limitations and regulations imposed by statute.

Terms of court when and where held.

SEC. 6. The county court shall be held in each of the counties of this state, at the county seat thereof, on the first Monday of every month, except when the circuit court of said county shall be in session, and shall continue from day to day as the judge thereof may find necessary, or convenient for the transaction of business; but no notice of the holding of such court shall be necessary in any case, except such as is given by the process of the court, or the continuance of the cause.

Oath of judge

SEC. 7. Each judge of the county court, before entering upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States, and of the state of Wisconsin, and faithfully, impartially, and honestly to discharge the duties of his office; which oath may be administered by the clerk of the circuit court, or any justice of the peace, and shall be filed in the office of the clerk of the circuit court.

Clerk of circuit court to be clerk of county court; his powers and duties.

SEC. 8. The clerk of the circuit court shall be clerk of the county court, and shall have the custody and care of all the books and papers belonging to the court; shall be present at all trials, if required by the judge; may swear all the witnesses and jurors on the trial of a cause; shall keep minutes of all the proceedings, and enter the judgments of the court, under the direction of the judge; shall issue all process under his hand and the seal of the court, (signing himself "clerk of the county court,") except where otherwise provided for by law, and shall tax all costs from minutes thereof kept by him, including witnesses' fees, in the presence and under the direction of the judge: Provided, that in case of his inability to discharge his duties by reason of sickness or absence, his deputy may perform the same, or the court may employ some person in his place.

Process by whom served.

SEC. 9. All process from the court shall be directed to the sheriff of the proper county, and may be served by the sheriff or any of his deputies, or by any person specially deputed therefor by the court.

Security for costs.

SEC. 10. The county judge may, in all actions either before or after the issuing of process, at his discretion, require of the plaintiff satisfactory security for costs, and the person giving such security, shall sign a memorandum thereof in writing, to that effect, which shall be filed with the clerk.

Amicable suits.

SEC. 11. Amicable suits may be entered by the parties thereto without process, and thereupon the same pleading shall be made, and the same proceedings had, as in other cases.

Power of court to issue writs; how to be issued.

Sec. 12. Such courts shall have the like power to issue all necessary and proper writs in all civil causes, as is possessed by the circuit courts of this state, and the same proceedings shall be had by parties to procure such writs, as in the circuit courts; and every writ which shall issue out of such court, shall be sealed with the seal of said court, and tested in the name of the judge of said court, and shall be signed by the clerk thereof, except that attorneys may issue process in the manner prescribed by law.

When returnable.

Sec. 13. Any writ issued by the county court shall be made returnable to the next term after it shall be issued, provided it issued ten days before the term; but if not issued ten days before the term, it shall be made returnable at the next succeeding term after the first.

Proceedings on return of writ, &c.

Sec. 14. On the return of any writ personally served, if the defendant do not appear in person or by attorney, when the cause is called, the court may at its discretion, at the request of the plaintiff, proceed ex parte with the cause: if the writ shall not have been personally served, the court may at its discretion, order an alias writ to issue, or notice to be given to the defendant, by order of publication, in the manner as provided by law for the circuit court to proceed; and the law for bringing parties into court in the circuit court, shall govern the county court, except as to the time of service, as herein provided.

Continuances.

Sec. 15. Whenever the judge of the court shall grant a continuance of a cause, it shall be for such reasonable time as he may think necessary, not exceeding three months.

When issue tried by court, and when by jury.

Jury of six.

Sec. 16. If an issue of law be made in the cause, it shall be tried by the court; if an issue of fact, it shall on demand of either party, as hereinafter provided, be tried by a jury to consist of not more than six persons; and if no jury be demanded by either party, the issue shall be tried by the court.

When and how demand for jury, to be made; proceedings in obtaining same.

Sec. 17. The demand for a jury shall be made after issue joined, and if the cause be adjourned, before the adjournment, and must be accompanied by the payment into court of the legal fees for the jury demanded, such fees to be taxed against the party losing; on such demand, the court shall direct an officer or disinterested person present, to write down the names of three times the number of persons required for the jury, who are qualified to serve as jurors in the circuit court, and not of kin to either party, or in any manner interested in the cause; such officer or person being first by the court sworn to select such names without partiality to either party; the list being made, the parties shall each alternately strike out a name until the requisite number be left; and if either party shall refuse or neglect to strike out on his part, the clerk or court may strike out in his stead; a venire may then be issued by the court for the persons thus selected, and delivered to an officer who shall forthwith proceed to summon the jury therein named. If any of the jurors named in such venire shall not be found or shall fail to appear according to the summons, or if there shall be any legal objection to any that shall appear, the court shall direct the officer to summon a sufficient number of talesmen

Talesmen, &c.

to supply the deficiency, but in all cases the parties may agree upon any number of persons to try the cause.

Attachments in county courts.

SEC. 18. Any creditor may proceed by attachment in the county court, against the property of his debtor in the cases, upon the conditions and in the manner provided by law for proceedings against debtors in attachment in the circuit court, subject to the limitation of the jurisdiction of the county court, and such attachments in the county courts, shall be issued and proceeded in, in all respects in conformity with the provisions regulating proceedings against debtors in attachment in the circuit court, so far as the same can be made to apply, and are consistent with the practice of said county court, as herein established, and every writ of attachment shall be made returnable in the same manner as other writs and process.

Actions of replevin.

SEC. 19. Actions of replevin shall be commenced and proceeded in, in said county courts, in the same manner in all respects as is provided for actions of replevin in the circuit court, so far as the provisions thereof can be made to apply, and are consistent with the practice of said county courts, as herein established; but it shall not be necessary that the issue in any action of replevin in the county court shall be tried by a jury, unless one of the parties thereto demand the same as hereinbefore provided, and every writ of replevin shall be made returnable in the same manner as other writs.

When general provisions of statutes applicable to county courts.

SEC. 20. All of the general provisions of the statutes of the state of Wisconsin, relating to the powers and duties of courts of record, shall apply to the county courts hereby established, so far as the same are not inconsistent with any provisions respecting the said courts and the proceedings and practice therein in this act contained, and no further.

County to provide books, and the judge blanks.

SEC. 21. Each county shall provide all books and stationery necessary for keeping the records of its county court, but all blanks shall be furnished by the county judge.

Judge to procure seal.

SEC. 22. The county judge of each county shall, at the expense of the county, cause to be made for the use of his court, a seal with a suitable device, and with the words (here insert the name of the county) "county court" engraved thereon.

Appeals and writs of error.

SEC. 23. No appeal shall be made or allowed of any cause tried or determined by a county court, except in probate cases, but in all cases of judgment rendered in such courts, either party thinking himself aggrieved or injured by such judgment, may remove the same by writ of error to the supreme court.

Causes removed and reviewed same as from circuit courts.

SEC. 24. Causes may be removed from the county courts to the supreme court and the decisions and judgments of county courts may be reviewed by the supreme court, in the same manner that causes are removed from circuit courts to the supreme court and the decisions and judgments of circuit courts are reviewed by the supreme court; and the supreme court shall have the same power over such causes and judgments as it has over causes and judgments of the circuit court.

Bill of exceptions.

SEC. 25. The party or attorney in a cause may demand and shall be entitled to receive of the judge of the county court, a bill of exceptions in the same manner and under the same restrictions, as in the circuit court.

When orders to be made in open court; taxation of judge's fees.

SEC. 26. The judges of the county courts in the exercise of probate powers and the discharge of probate duties, shall never make any order affecting in any way the rights of any person, except it be done in open court. And all fees allowed the county judge by law for probate services, shall be taxed by the judge of the circuit court, when required by any person interested.

Contempts.

SEC. 27. The judges of the county courts shall have power to punish contempts in the same manner that the judges of the circuit courts are or may be authorized by law to punish for contempts.

Adjournments.

SEC. 28. If the judge authorized to hold such court, shall not attend for that purpose before four o'clock on the day appointed for such court to meet, it shall be the duty of the sheriff or of the clerk to adjourn said court from day to day for three days, unless the judge shall sooner appear; and if the judge do not appear at that time, the court shall stand adjourned and all causes continued until the next regular day for such court to meet.

All appeals, &c., from justices' courts, to be to county court.

SEC. 29. From and after such county courts shall be organized, all cases hereafter required by law to be removed from justices of the peace to the circuit court, whether by appeal or otherwise, shall be removed to the county courts, and the like proceedings therein shall be had in the county court as is by law required in the circuit court. And all laws providing for taking cases to the circuit court from justices' courts, shall from thenceforth be construed to mean and read, to the county court, instead of the circuit court.

Judges may be removed.

SEC. 30. Any judge of the county court may be removed from office in the manner provided for the removal of judges of the supreme or circuit courts in the constitution of this state.

When judge interested, &c., how cause tried.

SEC. 31. No judge of the county court shall have power to try and determine any cause in which he shall be interested, or in which he shall have acted as counsel for either party, except by agreement of parties; and in all such cases he shall transmit the cause to the circuit court of the county, and the circuit court shall thereupon proceed to try and determine the same in the same manner and order as if it had originated in the circuit court.

Change of venue for interest, &c., in county judge.

SEC. 32. In all cases where a change of venue is allowed for the reasons of interest or prejudice upon the part of the county judge the cause shall not be remitted to another county, but shall be removed to the circuit court.

CHAPTER 87.

GENERAL PROVISIONS CONCERNING COURTS OF RECORD, OF THE POWERS AND DUTIES OF JUDGES, AND OF ATTORNEYS AND OFFICERS OF COURT.

What are courts of record, and their powers.

SECTION 1. The several courts of this state having a seal, are courts of record, and they shall respectively have power:

1. To issue process of subpœna, requiring the attendance of any witness residing or being in any part of this state, to testify in any matter or cause pending or triable in such courts:

2. To administer oaths to witnesses in any such matter or cause, and in all other cases when it may be necessary in the exercise of the powers and duties of such court:

3. To devise and make such new writs and forms of proceedings as may be necessary to carry into effect the powers and jurisdiction possessed by them.

Judges of courts may make rules, &c.; duties of clerk of supreme court in relation thereto.

SEC. 2. The judges of the supreme court, and the judges of the several circuit courts and county courts, may make and record all such rules and regulations respecting the trial and conducting of business, both in term and vacation, as the discretion of the said court and judges shall dictate, not contravening the laws of the United States, or of this state; and in order that the rules of practice and proceedings of the circuit courts may be uniform, and as near as may be conformable to the rules of the supreme court, the clerk of said court shall from time to time transmit copies of the rules to the clerks of the circuit courts in their respective counties in this state, and the judges of said circuit courts shall from time to time make rules agreeably thereto, as near as may be, for the practice of their courts respectively.

Process or proceedings not to be discontinued by vacancy in office of judge.

SEC. 3. No process, proceeding or suit, civil or criminal, before any of the said courts, shall be discontinued by the occurrence of any vacancy in the office of any judge, or of all the judges of such court, nor by the election of any new judge or judges of any such court, but the persons so elected shall have power to continue, hear and determine such process, proceeding or suit, as their predecessors might have done if no new election had been.

Same if failure to hold term, or alteration thereof.

SEC. 4. No process issued, or suit or proceeding in any court of record, shall be discontinued by reason of such court not having been held at any stated terms thereof, or by reason of any term of such court having been altered; but such process shall be deemed returnable at the term which shall be held next after such failure, or at the term established by such alteration, and such suit or proceeding shall be continued to such next term, or to the term established by such alteration, as the case may be.

Same of omission to adjourn, and of adjourning before end of of term.

SEC. 5. No omission to adjourn any such court from day to day, previous to the final adjournment thereof without day, shall vitiate any proceedings in such court; and the adjournment of any court before the expiration of its term shall not affect the return or service of any writ issued prior or subsequent to such adjournment.

When seal may be destroyed,

SEC. 6. Whenever the seal of any court shall be so injured that it cannot conveniently be used, the court shall cause the same to be destroyed; and whenever the seal of any court shall be lost or destroyed, such court shall cause a new seal to be made, similar in all respects to the former seal, which shall become the seal of the court.

And when new one made.

What acts may be punished as criminal contempts.

Sec. 7. Every court of record shall have power to punish as for a criminal contempt, persons guilty of either of the following acts, and no others:

1. Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due its authority:

2. Any breach of the peace, noise or disturbance, directly tending to interrupt its proceedings:

3. Wilful disobedience of any process or order, lawfully issued or made by it:

4. Resistance wilfully offered by any person to the lawful order or process of the court:

5. The contumacious and unlawful refusal of any person to be sworn as a witeess; and when so sworn, the like refusal to answer any legal and proper interrogatory:

6. The publication of a false or grossly inaccurate copy of its proceedings; but no court can punish as a contempt the publication of true, full and fair reports of any trial, argument, proceedings or decision had in such court.

Punishments for contempts.

Sec. 8. Punishments for contempt may be by fine, or by imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court; but the fine shall in no case exceed the sum of two hundred and fifty dollars, nor the imprisonment thirty days; and when any person shall be committed to prison for the non-payment of any such fine, he shall be discharged at the expiration of thirty days.

When punished summarily &c.

Sec. 9. Contempts committed in the immediate view and presence of the court, may be punished summarily; in other cases the party shall be notified of the accusation, and have a reasonable time to make his defence.

Order of commitment, what to contain.

Sec. 10. Whenever any person shall be committed for any contempt specified in this chapter, the particular circumstances of his offence shall be set forth in the order or warrant of commitment.

Limitation of preceding sections.

Sec. 11. Nothing contained in the preceding sections shall be construed to extend to proceedings against parties or officers, as for any contempt, for the purpose of enforcing any civil right or remedy.

Persons punished for contempts may also be indicted.

Sec. 12. Persons punished for a contempt under the preceding provisions, shall notwithstanding be liable to indictment for such offence; but the court before which a conviction shall be had on such indictment shall, in forming its sentence, take into consideration the punishment before inflicted.

When court may be adjourned to another place, and proceedings thereon.

Sec. 13. Whenever it shall be deemed unsafe or inexpedient, by reason of war, pestilence, or other public calamity, to hold any court at the time and place appointed therefor, the justices or judges of the court may appoint any other place within the same county, and any other time for holding the same; and the said adjourned session shall be taken as a part and continuance of said term, and all proceedings in the said court may be continued at said adjourned times and places, and be of the same force and effect as if said court had continued its session at the place it was holden before said adjournment.

How order to be made and published.

SEC. 14. Every such appointment shall be made by an order in writing, signed by the justices or judges making the same, and shall be published by advertisement in some newspaper, or in such other manner as shall be required in the order.

When board of supervisors may appoint place.

SEC. 15. Whenever there shall be no court house in any county, or the court house shall for any cause be unsafe, inconvenient, or unfit for the holding any court, the board of supervisors of such county may appoint some other convenient building, at, or in the vicinity of, the seat of justice of such county, as a temporary place for holding such court.

Place appointed, to be deemed court house.

SEC. 16. The place so appointed shall be deemed the court house of the county for the time being, for all purposes.

Courts to be public, &c.

SEC. 17. The sittings of every court within this state shall be public, and every citizen may freely attend the same.

When courts not to transact business on Sunday.

SEC. 18. No court shall be opened, or transact any business on the first day of the week, unless it be for the purpose of instructing or discharging a jury, or of receiving a verdict; but this section shall not prevent the exercise of the jurisdiction of any single magistrate, when it shall be necessary in criminal cases to preserve the peace, or to arrest offenders.

Writs, proceedings, &c, how to be made out.

SEC. 19. All writs, process, proceedings and records in any court within this state, shall be in the English language, (except that the proper and known names of process, and technical words, may be expressed in the language heretofore and now commonly used,) and shall be made out on paper or parchment, in a fair legible character, in words at length, and not abbreviated; but such abbreviations as are now commonly used in the English language, may be used, and numbers may be expressed by Arabic figures, or Roman numerals, in the customary manner.

Circuit judge not to hear cause when interested, &c, in same

SEC. 20. In case the judge of the circuit court shall be interested in any cause or causes pending in such court, or shall have acted as attorney, solicitor or counsel for either of the parties thereto, the said judge shall not have power to hear and determine such cause or causes, except by consent of the parties thereto; and upon motion, the said judge shall order a change of venue to an adjoining circuit, and the judge of said circuit shall hear and determine said cause or causes.

When judge not to sit.

SEC. 21. No judge of an appellate court, or of any court to which a writ of certiorari or of error shall be returnable, shall decide, or take part in the decision of any cause or matter which shall have been determined by him while sitting as a judge of any other court, unless there shall not be a quorum without him.

When not to have a partner, or be interested in costs.

SEC. 22. No judge shall have any partner practicing in the court of which he is a judge; nor shall any judge be directly or indirectly interested in the costs of any suit that shall be brought in the court of which he is a judge, except in those suits in which he shall be a party, or be interested.

Circuit judges to be personally

SEC. 23. The circuit judges shall be held personally liable to any party injured, for any wilful violation of the law in granting injunctions and appointing receivers, or for refusing to hear motions to dissolve injunctions and to discharge receivers: Provided, such motions are made in accordance with the rules of chancery proceedings, or such rules as may be promulgated by the supreme court.

liable to party injured.

SEC. 24. No judge or commissioner shall be allowed to demand or receive any fees or compensation, for services as such judge, commissioner or judicial officer, except where fees or other compensation are expressly given by law; and no judge, commissioner, or other judicial officer, shall be allowed to give advice to parties litigant, in any matter or suit pending before such judge or officer, or which he has reason to believe will be brought before him for decision; or draft or prepare any papers or other proceedings relating to any such matter or suit, except when expressly authorized by law.

Judge, &c., not to receive fees unless given by law.

When judicial officer not to give advice or draft papers.

SEC. 25. The officers of the several courts of record shall be liable to arrest, and may be held to bail in the same manner as other persons, except during the actual sitting of any court of which they are officers; and when sued with any other person, such officers shall be liable to arrest, and may be held to bail as other persons, during the sitting of the court of which they are officers; but no attorney, solicitor or counsellor shall be exempt from arrest during the sitting of the court of which he is an officer, unless he shall be employed in some cause pending and then to be heard in such court.

When officers of court liable to arrest, &c.

SEC. 26. Whenever any person shall apply to the supreme, circuit or county court, to be admitted to practice therein as an attorney, and shall show satisfactorily to such court that he is a resident of the state, and is of good moral character, the judge, or judges thereof, shall grant to such applicant a license to practice in the said courts, respectively, in which he or they may preside.

Who entitled to a license as attorney.

SEC. 27. Every person of full age and sound mind, may appear by attorney or solicitor, as the case may require, in every action or plea by or against him, in any court, or may, at his election, prosecute or defend such action or plea in person; but this provision shall not extend to criminal cases, nor shall any person be permitted to appear on record in any civil cause in person, while he has an attorney or solicitor in such cause.

Parties may appear in person or by attorney, &c.

SEC. 28. It shall not be necessary to file any warrant of attorney to authorize any attorney to appear in any court, for either party to an action brought therein, except in cases where it shall be specially required by law; nor shall any entry of any warrant of attorney in any record or other proceeding, be necessary; but the plaintiff in his declaration, and the defendant in his plea, shall state the name of the attorney or attorneys by whom they respectively appear.

Warrant of attorney need not be filed.

Name of attorney to be inserted in declaration and plea.

SEC. 29. No person shall be employed or allowed to appear as counsel, solicitor or attorney, before any court, in any suit which shall have been previously determined before himself, as a judge or justice of the peace.

When judge or justice not to appear as attorney.

CHAPTER 88.

OF COURTS HELD BY JUSTICES OF THE PEACE.

SECTION 1. Of the jurisdiction of justices' courts in civil cases.
11. Of the docket.
12. Of the commencement of suits, and the service and return of process.
34. Of the appearance of parties.
41. Of pleadings, of the removal of causes, and set-off of mutual judgments.
61. Of adjournments.
70. Of witnesses and depositons.
80. Of trial by jury and the incidents thereto, and of trials by the justice.
100. Of proceedings by attachment, and against garnishees.
134. Of proceedings in replevin.
161. Of proceedings by and against corporations.
166. Of judgments, and filing transcripts thereof.
187. Of executions, of the stay thereof, and proceedings thereon.
213. Of the removal of causes by certiorari, and proceedings thereon.
226. Of appeals, and proceedings thereon.
249. Of proceedings for contempts before justices of the peace.
261. Miscellaneous provisions.

Of the Jurisdiction of Justices' Courts in civil cases.

Jurisdiction of justices.

SECTION 1. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater.

Where to keep their offices, &c.

SEC. 2. Every justice of the peace shall keep his office in the town for which he may be elected, and not elsewhere, but he may issue process at any place in the county.

When not to keep office with attorney, &c.

SEC. 3. No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner: and in that case, such partner shall not be permitted to appear or practice as attorney in any case tried before such justice.

Authorized to hold courts for the trial of actions; vested with necessary powers of courts of record, &c.

SEC. 4. Every justice of the peace elected in any town in this state, is hereby authorized to hold a court for the trial of all actions in the next section enumerated, and to hear, try and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this state; and all laws of a general nature are to apply to such justice's court so far as the same may be applicable.

Jurisdiction of actions and proceedings.

SEC. 5. Every such justice shall have jurisdiction over and cognizance of the following actions and proceedings:

1. Actions of debt, covenant and assumpsit, wherein the debt or balance due, or damages claimed, shall not exceed one hundred dollars:

2. Actions of trespass and trespass on the case, for injuries to persons, or to real or personal property, wherein the damages claimed shall not exceed one hundred dollars:

3. Actions of replevin wherein the value of the property claimed shall not exceed one hundred dollars:

4. Actions of forcible entry and detainer:

5. Actions for a penalty not exceeding one hundred dollars, gived by any statute of this state :

6. To take and enter a judgment on the confession of a defendant, where the amount confessed shall not exceed two hundred dollars.

Ib. SEC. 6. A justice of the peace shall also have jurisdiction over and cognizance of the following actions :

1. Actions on a note, bill, bond or other instrument in writing, given for the payment of money or other valuable article, for any amount over one hundred dollars, which has been reduced by credits or payments indorsed thereon, to an amount not exceeding one hundred dollars :

2. Actions where payments are to be made by installments on any bond, note or other instrument in writing as they shall become due.

Ib. SEC. 7. Justices shall have jurisdiction in all actions on any surety bond taken by them, though the penalty or amount claimed exceed one hundred dollars.

Ib. SEC. 8. Justices shall have jurisdiction in all actions on any surety bonds given in favor of any town, though the penalty exceed one hundred dollars, and the damage claimed shall not exceed one hundred dollars.

Ib. SEC. 9. A justice shall have jurisdiction of actions founded on any account where the amount proved to the satisfaction of the justice shall not exceed two hundred and fifty dollars, and the same shall be reduced to an amount, not exceeding one hundred dollars, by credits given, or by the set-off or demand of the opposite party.

Of what actions not to have cognizance.

SEC. 10. No justice shall have cognizance of any action :

1. Against an executor or administrator, for any debt or demand due from the testator or intestate :

2. Actions of slander, malicious prosecution, or false imprisonment :

3. Actions where the title to real property shall come in question :

4. Actions for or against any town in which the justice is elected.

Of the Docket.

To keep docket, and what entries to make therein.

SEC. 11. Every justice of the peace shall keep a docket in which he shall enter in each case to which they relate,

1. The titles of all causes commenced before him :

2. The time when the process was issued against the defendant, when returnable, and the particular process issued, and a statement of the return of the officer :

3. The time when the parties appeared before him, either without process or upon the return of process :

4. Where the pleadings are written, a brief statement of their nature, and reference to the pleas filed ; and where the pleadings are made orally, a concise statement of the declaration of the plaintiff, the plea and notice of the defendant, the further pleadings if any, and the issue joined :

5. Every adjournment, stating at whose request; and to what time and place:

6. The issuing of a venire, stating at whose request, and the time and place of its return :

7. The time when a trial was had, the names of the jurors returned summoned, who did not appear, and the fines imposed on them, if any ; and the names of the jurors who were sworn :

8. The names of witnesses sworn at the request of either party, stating at whose request; the objections, if any, made to the competency of a witness, and the decision thereon :

9. The verdict of the jury and when received :

10. The judgment rendered by the justice, and the time of rendering the same ; and the amount of the debt, damages, costs, and fees due to each person separately :

11. The time of putting in any stay of execution, and the name of the surety :

12. The time of issuing execution, and the name of the officer to whom delivered :

13. The return of every execution and when made, and every renewal of an execution made by him, with the date of such renewal :

14. The fact of his having given a transcript of the judgment, to be filed in the office of the clerk of the circuit court, and the time when the same was given :

15. The fact of a certiorari having been brought on any judgment rendered by him, and the time of the service of the same :

16. The fact of an appeal having been made from the judgment rendered by him, and the time when made :

17. In addition to the above, he shall enter all motions made in a cause, and his decision thereon, and the exceptions taken thereto, and all other proceedings before him in the cause, which he may think useful.

Of the Commencement of Suits, and the Service and Return of Process.

Security for costs, when required.

SEC. 12. Any justice of the peace in this state shall in all civil actions hereafter instituted, either before or after the process shall issue, require the plaintiff in such action, if a non-resident of the county, to give security for the costs ; and may at his discretion, require a like security of all other plaintiffs, and if the plaintiff refuse or neglect to give such security, the suit shall be dismissed.

Memorandum of surety.

SEC. 13. The person becoming security as aforesaid, shall sign the following memorandum on the docket : "I, A. B., agree to become security for the costs in this cause;" and if judgment be rendered in such suit against the plaintiff, execution for costs may issue against the plaintiff and security.

Suits, how instituted.

SEC. 14. Suits may be instituted before a justice of the peace, either by the voluntary appearance of the parties, or by the process of summons, warrant, writ of attachment, or writ of replevin.

Process, how issued.

SEC. 15. All process issued by a justice of the peace, shall run, "In the name of the State of Wisconsin," be dated on the day it issued, and shall be signed by the justice granting the same, and be directed to the sheriff or any constable of the proper county.

Summons, when to be first process; command and return of same.

SEC. 16. In all cases not otherwise specially provided for, the first process in suits shall be by a summons, commanding the officer to summon the defendant to appear before such justice at the time and place expressed in such summons, not less than six nor more than fifteen days from the date thereof, to answer unto the plaintiff in the plea in the summons contained.

May be issued against any number of defendants.

SEC. 17. A justice of the peace may issue a summons in favor of the same plaintiff, against any number of defendants, and on the return of such summons the plaintiff may declare against each defendant severally; and the cost of such summons shall be apportioned among the several defendants.

When name of defendant unknown, may be sued by fictitious name, &c.

SEC. 18. When the name of any defendant is not known to the plaintiff, a suit may be commenced by summons or warrant by a fictitious name, and it shall not be abated for that cause, but the justice may amend the proceedings according to the truth of the matter, and shall thereafter proceed therein in the like manner, as if the defendant had been sued by his right name.

When summons may be returnable in three days;

SEC. 19. A justice of the peace shall issue a summons returnable in three days, in every case where he is satisfied from the facts and circumstances stated in an affidavit of the plaintiff or other competent witness, that the plaintiff has a subsisting and unsatisfied cause of action upon a contract expressed or implied, against the defendant, and that the defendant is a non-resident of the county, or is about to remove from the county with intent not to return thereto to reside, or that the defendant is about fraudulently to remove, convey or dispose of his property so that the plaintiff will be in danger of losing his debt or demand unless such summons be granted.

Warrant, when plaintiff entitled to in certain cases.

SEC. 20. The plaintiff shall be entitled to a warrant upon filing with the justice an affidavit, made by such plaintiff or some one in his behalf, showing to the satisfaction of said justice, either,

1. That the plaintiff has a demand against the defendant for money collected by him as a public officer; or,

2. That the plaintiff has a demand against the defendant for damages arising from the misconduct or neglect of the defendant, in any professional employment, or public office.

Ib.

SEC. 21. In actions other than those founded on judgment or contract, the plaintiff shall be entitled to a warrant, if he or some person in his behalf shall make and file with the justice an affidavit, specifying the nature of the demand, and showing to the satisfaction of such justice,

1. That the defendant has committed a trespass or other wrong, to the damage of the plaintiff; or,

2. That the defendant has incurred a penalty or forfeiture, by the violation of some law of this state, for which the person filing such affidavit has a right to prosecute in the name of the people of this state, or otherwise.

On application for warrant, facts and circumstances to be shown by affidavit.

SEC. 22. In all cases, on application for a warrant under the provisions of either of the preceding sections, the person applying therefor shall, by affidavit, show the facts and circumstances, within the knowledge of the person making such affidavit, constituting the grounds of the application, whereby the justice may the better judge of the necessity and propriety of issuing such warrant.

Pendency of suit commenced by summons, when not to be plead in abatement.

SEC. 23. The pendency of a suit commenced by summons shall not be pleaded in abatement to a suit commenced by summons returnable in three days, or by warrant.

Summons, how served.

SEC. 24. A summons shall be served by reading the same to the defendant, and delivering a copy thereof to him when demanded, if the defendant be found, and if not found, by leaving a copy thereof at his usual place of abode, in presence of some one of the family of suitable age and discretion, who shall be informed of its contents, at least six days before the time of the appearance therein mentioned; a summons returnable in three days must be served personally, and not less than two days before the time of the appearance therein mentioned.

Same of three days' summons.

Warrant, what to contain.

SEC. 25. A warrant shall command the sheriff or constable to take the body of the defendant, and bring him forthwith before such justice to answer the plaintiff in a plea in the same warrant to be mentioned, and shall further require the officer to notify the plaintiff of such arrest.

How served and returned, &c.

SEC. 26. A warrant shall be served by arresting the defendant and taking him before the justice who issued the same; but if such justice be, on the return thereof, absent or unable to try the cause, the officer shall forthwith take the defendant to the nearest justice of the same town, who shall take cognizance of the cause, and proceed therein as if the warrant had been issued by himself.

How long defendant to be detained in custody on warrant.

SEC. 27. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer for the space of twelve hours, and no longer, unless within that time he has been released by the direction of the justice, or the trial of the cause has been commenced, or has been delayed at the instance of the defendant.

Process, how to be returned.

SEC. 28. Every constable or sheriff serving any process authorized by this chapter, shall return thereon, in writing, the time and manner of service, and shall sign his name and office to such return.

Penalty on officer for failure to execute and return process, or making false return.

SEC. 29. If any officer, without showing good cause therefor, fail to execute any process delivered to him, and make due return thereof, or make false return, such officer, for every such offence, shall pay to the party injured ten dollars, and all damages such party may have sustained by reason thereof, to be recovered in an action of debt.

When and how person other than an officer empowered to execute process.

SEC. 30. Every justice issuing any process, upon being satisfied by the affidavit of the plaintiff or other credible evidence, that such process will not be executed for the want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same by an indorsement on the process to the following effect; "At the request and risk of the plaintiff, I authorize ——— ——— to execute and return this writ, J. P., justice of the peace." And the person so empowered, shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

Form of summons.

SEC. 31. A summons may be in following form:

——— *County,* }
Town of ——— } ss.

To the sheriff or any constable of said county:

In the name of the state of Wisconsin, you are hereby commanded to summon A. B., if he shall be found within your county, to appear before the undersigned, one of the justices of the peace in and for said county, at my office in said town, on the ——— day of ——— A. D. 18 — at ——— o'clock in the ——— noon, to answer unto C. D., plaintiff, in a plea of ——— to his damage one hundred dollars or under. Hereof fail not at your peril.

Given under my hand, at ——— this ——— day of ——— ———, 18 — .

J. P., *Justice of the Peace.*

Same against several defendants sued individually.

SEC. 32. When several defendants are intended to be sued individually, the following form may be used:

——— *County,* }
Town of ——— } ss.

To the sheriff or any constable of said county:

In the name of the state of Wisconsin, you are hereby commanded to summon A, B, C, D, E, &c., severally and individually, each for himself, to appear before the undersigned, one of the justices of the peace in and for said county, at my office in said town, on the ——— day of ———, A. D. 18—, at ——— o'clock in the ——— noon, then and there severally and individually, each for himself, to answer unto O. P., plaintiff, in a plea of ———, to his damage one hundred dollars or under. Hereof fail not at your peril.

Given under my hand, at ———, this ——— day of ———, 18—.

J. P., *Justice of the Peace.*

Form of warrant.

SEC. 33. A warrant may be in the following form:

——— *County,* }
Town of ——— } ss.

To the sheriff or any constable of said county:

In the name of the state of Wisconsin, you are hereby commanded to take the body of A. B., if to be found within your county, and him bring forthwith before the undersigned, one of the justices of the peace in and for said county, at my office in said town, to answer unto C. D., plaintiff, in a plea of ———, to his damage one hundred dollars or under: and you are commanded to give due notice thereof to the plaintiff. Hereof fail not at your peril.

Given under my hand, at ———, this ——— day of ———, 18—.

J. P., *Justice of the Peace.*

Of the Appearance of Parties.

Who may appear and conduct or defend suits.

SEC. 34. Any plaintiff or defendant, except persons under twenty one years of age and corporations, may appear by agent or in person, and conduct or defend any suit.

In suit by infant, next friend to be appointed, &c.

SEC. 35. No suit shall be instituted by an infant plaintiff unless a next friend for such infant shall have been appointed, but every suit so commenced shall be dismissed. Whenever requested the justice shall appoint some suitable person who shall consent thereunto in writing, to be named by such plaintiff to act as his next friend in such suit, who shall be responsible for the costs therein.

Guardians to be appointed for infant defendants on return of civil process.

SEC. 36. After the service and return of civil process against any infant defendant, the suit shall not be further prosecuted until a guardian for such defendant shall have been appointed. Upon the request of a defendant, the justice shall appoint some person who will consent thereto in writing, to be guardian of the defendant in defence of the suit; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian; and the consent of such guardian or next friend shall be filed with the justice, and the guardian for the defendant shall not be liable for any costs in the suit.

Form of consent of next friend, &c.

SEC. 37. The following forms may be used under the two last sections:

——— *County*, ss. I hereby consent to be the next friend of A. B. an infant, in a suit against C. D.; and hereby, for value received, promise and agree with the said C. D. to pay him such costs as he shall recover against the said A. B. by judgment in said suit. Dated, &c.

JOHN STYLES.

The said John Styles is accordingly appointed. Dated, &c.
J. P., *Justice of the Peace.*

Justice's Court,
C. D.
ads. } Before J. P., Esq., Justice of the Peace.
A. B.

Form of consent of guardian, &c.

——— *County*, ss. I consent to be guardian of C. D. an infant, the defendant in the above entitled cause. Dated, &c.

JOHN STYLES.

The said John Styles is accordingly appointed. Dated, &c.
J. P., *Justice of the Peace.*

Corporations may sue before justices, &c.

SEC. 38. Any corporation may commence a suit before a justice of the peace, and appear by attorney lawfully appointed and conduct the same.

To appear and defend by attorney.

SEC. 39. Any corporation liable to be sued before a justice of the peace, shall appear and defend by attorney lawfully appointed.

When and how party may appoint agent, and when and how agency to be proven.

SEC. 40. A party authorised to appear by agent may appoint any person to act as such agent, and the authority of the agent may be either written or verbal, and shall in all cases, when the justice requires proof, be proven either by the agent himself or by other competent testimony, unless admitted by the opposite party.

Of Pleadings, of the removal of causes, and Set-off of mutual judgments.

On return of process, justice to wait one hour.

Sec. 41. Upon the return of a process duly served, the justice shall wait one hour after the time specified in such writ for the appearance of the parties, unless they sooner appear.

Where plea on promises inserted, for what plf. may declare.

Sec. 42. A plaintiff may, where a plea on promises is inserted in a process, declare for a breach of any contract expressed or implied, verbal or written, under seal, or not under seal, for a judgment rendered by a justice of the peace, or for damages where no wrongful act is complained of.

When action of trespass on the case may be brought for direct injuries, &c.

Sec. 43. Where by the wrongful act of any person, an injury is produced either to the person, property, or rights of another, or to his servant, child or wife, an action of trespass on the case may be brought to recover damages for such injury, whether it was wilful, or accompanied by force or not, and whether such injury was a direct and immediate consequence from such wrongful act, or consequential and indirect.

When action of trover lies, and how judgment may be rendered thereon.

Certain sales and transfers void.

Sec. 44. Where personal property is wrongfully withheld from the possession of the plaintiff, an action of trover may be brought to recover the value of such property, and damages for the detention thereof; and the plaintiff may, where the value is found in his favor, waive the same, and take a judgment for the return and possession of the property withheld. All sales or transfers made by the defendant of such property during the pendency of such action shall be fraudulent and void as to the plaintiff.

Plaintiff, if required, to give verbal statement of his demand, and a bill of particulars.

Sec. 45. When both parties first appear before the justice, either upon the return of process, or upon their voluntary appearance without process, the justice shall on the application of the defendant, and may without such application, require of the plaintiff a brief verbal statement of the nature of his demand, which shall be entered on the docket of the justice; and if founded on an account, he shall give a bill of particulars of such demand.

When and how defendant may remove cause to another justice.

Sec. 46. In all cases, if the defendant shall, on the return day of the process and before any proceedings are had on his part, make oath, that from prejudice or other cause, he believes such justice will not decide impartially in the matter, and shall pay to the justice seventy-five cents for making a copy of his docket, and transmitting the papers in the case, then such justice shall immediately transmit all the papers in the case to the nearest justice of the peace, qualified by law to try a cause between the parties in such suit, who shall proceed to hear, try, and determine the same, in the same manner as it would have been lawful for the justice before whom the said suit was commenced, to have done. This provision shall not extend to a second removal.

When justice is a material witness, or near of kin to either party, how cause removed.

Sec. 47. If previous to joining issue in any suit, either party, his agent or attorney, shall make affidavit that the justice before whom the same is pending, is a material witness for such party, without whose testimony he cannot safely proceed to trial, or if it shall appear that the justice is near of kin to either party, then and in such case, the said justice shall transmit said suit, and all papers appertaining to the same, to some other justice of the same county, who may thereupon proceed to hear, try and determine the same, in the same manner as it would have been lawful for the justice before whom the said suit was commenced to have done.

Plea of defendant; entry to be made by justice; deft. to give bill of particulars of set-off.

SEC. 48. The defendant may answer the declaration orally or in writing, and the justice shall enter in his docket a brief statement of its nature, and if a motion, demurrer or plea in abatement be made, be shall enter his decision thereon, If the defendant plead or give notice of a set-off, he shall if required by the justice or plaintiff, give a bill of particulars of such set-off, at the time of joining issue.

How set-off pleaded when amount exceeds a justice's jurisdiction.

SEC. 49. Whenever the set-off of the defendant shall exceed the amount of which a justice has jurisdiction, he may plead the same in the following manner:

1. If the set-off be an account consisting of various items, he may plead such items, of oldest dates, as will amount to a sum of which the justice has jurisdiction:

2. If the set-off be an instrument in writing, or a single item of account and indivisible, he may plead so much thereof as would be within a justice's jurisdiction, if the same were divisible.

Deft. may give notice with plea of general issue.

SEC. 50. Whenever a defendant shall plead the general issue in an action in which such issue may be pleaded, or when he shall plead *nul tiel* record to an action of debt on judgment, or whenever in an action of covenant he shall, by his plea, deny the execution of the instrument on which the plaintiff may have declared, he may give notice with such plea of any matters which, if heretofore pleaded, would be a bar to such action, and may give such matter in evidence on the trial.

Issue to be joined before adjournment.

SEC. 51. The parties shall in all cases, join an issue in law or in fact before an application for adjournment shall be granted by the justice, unless they consent to an adjournment without such issue being made.

When and how, deft. may plead or give notice that the title to lands will come in question.

SEC. 52. In every action where the title to lands shall in any wise come in question, the defendant, at the time when he is required to join issue, and not after, may plead specially any plea, showing that the title of lands will come in question, or may, under the general issue, give a notice to that effect; such plea and notice may be joined with any other proper plea to the action. They shall be written, signed by the defendant or his attorney, and delivered to the justice, who shall file the same among the papers in the case.

To give bond.

SEC. 53. At the time of tendering such plea, or plea and notice, the defendant, with at least one sufficient surety, to be approved by the justice, shall enter into a bond to the plaintiff, in the penal sum of two hundred dollars, conditioned, if such plaintiff shall prosecute his said suit in the county court, and if judgment be rendered against the defendant on his plea of title in such court, he will pay the amount of such judgment with the costs.

If bond not given, justice to proceed, and deft precluded from defence of title.

SEC. 54. If such bond be not delivered as herein directed, the justice shall have jurisdiction of the case, and shall proceed therein, and the defendant shall be precluded in his defence, from all evidence drawing in question the title to lands.

Proceedings by justice upon filing plea and bond.

SEC. 55. Upon the filing the plea and bond, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the case, and shall certify and return to the county court of the county, a transcript of all the entries made in his docket relating to the case, together with all the process, and other papers relating to the suit, in the same manner and within the same time as upon an appeal.

On filing papers, county court to be possessed of cause, and how to proceed.

Sec. 56. Upon filing the proceedings and papers in the office of the clerk, the court shall become possessed of the cause, and proceed therein to final judgment and execution, the same as if said suit had been originally commenced therein, and the costs shall abide the event of the suit.

When justice shall dismiss cause from plff's own showing.

Sec. 57. If it appear on the trial from the plaintiff's own showing that the title to lands is in question, which title shall be disputed by the defendant, the justice shall dismiss the cause, and the plaintiff shall pay the costs.

Set off of one judgment against another.

Sec. 58. If there be mutual justices' judgments equitably belonging to the same parties, upon which the time of appealing has elapsed, on which there is no existing execution, one judgment, on the application of either party, and reasonable notice given to the adverse party, may be set off against the other, by the justice before whom the judgment, against which the set-off is proposed, may be.

Proceedings when judgment proposed as set-off was rendered before another justice.

Sec. 59. If the judgment proposed as a set-off, was rendered before another justice, the party proposing such set-off must produce before the justice a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that it is unsatisfied in whole or in part, and that there is no appeal or existing execution thereon, and such transcript was obtained for the purpose of being set-off against the judgment to which it was offered as a set-off. The justice granting such transcript, shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed, unless such transcript shall be returned with the proper justices' certificate thereon, that it has not been allowed in set-off.

Duties of justice before whom set-off of judgment is proposed to be made.

Sec. 60. If any justice shall set-off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be found due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

Of Adjournments.

When and how long justice may adjourn cause without motion.

Sec. 61. At the time of the return of either a summons or attachment, or of joining issue without process, a justice may, in his discretion, and with or without the consent of either party, adjourn the cause not exceeding three days.

In what manner and for what time first adjournment granted on application of party.

Sec. 62. At the time of the return of a summons or attachment, or the joining issue without process, the justice shall upon the application of either party, without requiring cause to be shown, adjourn the case for such time as may be required, not exceeding one week, but if sufficient cause be shown on oath, by either party, the justice shall grant an adjournment for a longer time than one week, not exceeding, however, ninety days; but no adjournment of a suit commenced by summons, returnable in three days, or attachment returnable in the same time, shall be granted by the justice, on the motion of the plaintiff, unless he shall show cause therefor as provided in the next section for a second adjournment.

Subsequent adjournment, when and how granted.

Sec. 63. No adjournment after the first shall be allowed upon the application of a party, unless such party shall satisfy the justice by his own oath, or the oath of some other person, that he cannot safely proceed to trial for want of some material witness or testimony, (naming such witness or testimony,) that he had used due diligence to obtain the same, (setting forth what diligence has been used,) and that he believes if an adjournment be allowed, he will be able to procure such testimony or witness, in time to be used upon the trial.

Time of adjournment; party applying to pay costs of same, &c.

Sec. 64. Every adjournment shall be for such reasonable time, not exceeding in all ninety days, unless by consent of parties a longer time be agreed upon, from the day of the return of the summons, as will enable the party to procure such testimony or witness, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice, and shall be paid by the party applying therefor; and the justice shall tax the fees of all witnesses who are in attendance for the adverse party.

When cause commenced by warrant is adjourned by consent defendant to be discharged.

Sec. 65. If a cause commenced by warrant be adjourned by the consent of both parties, or on the application of the plaintiff, the defendant shall be discharged from custody.

How adjourned on application of defendant.

Sec. 66. But if such cause be adjourned upon the application of the defendant, he shall continue during the time of the adjournment, in custody of the officer, unless he shall enter into recognizance before the justice, with such security as the justice shall approve, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if judgment be given against him in the suit, and execution is issued against his person, he will render himself up on such execution before the return day thereof, or in default thereof, that he, or his security will pay the judgment so recovered.

When new recognizance need not be given.

Sec. 67. If any such recognizance shall have been given upon any prior adjournment, it shall not be necessary to enter into any recognizance upon a subsequent adjournment, unless such recognizance be required by the justice, or the bail of the defendant in such prior recognizance.

What plaintiff must show to entitle him to recover upon the recognizance.

Sec. 68. In any suit, brought upon such recognizance, the plaintiff shall not be entitled to recover unless he show an execution upon the judgment obtained in the suit in which such adjournment was had, duly issued, within six days after the time when the same could have been issued against the person of the defendant, and a return thereon, that such defendant could not be found.

When certain costs shall not be taxable

Sec. 69. No costs shall be taxed for the travel or attendance of any witness in a cause, commenced by summons or attachment except in cases where said writs are returnable in three days, on the return day thereof, nor for the service of any subpœna issued therein returnable on that day, nor for travel in serving the same, unless an actual trial shall be had in the cause on such return day.

Of Witnesses and Depositions.

Subpœnas, how and by whom served.

Sec. 70. A subpœna may be served by any person, by reading it to the witness, or by delivering a copy thereof to him; and may be in the following form:

Form of same.

——— *County*, }
Town of ——— } ss.
To

In the name of the State of Wisconsin, you are hereby required to appear before the undersigned, one of the justices of the peace in, and for said county, at my office in said town, on the ——— day of ——— at —— o'clock in the —— noon of said day, to give evidence in a certain cause, then and there to be tried between ——— plaintiff, and ——— defendant, on the part of the

Given under my hand, this —— day of ——— 18
J. P., *Justice of the Peace.*

When attachment to compel attendance of witnesses may be issued.

Sec. 71. Whenever it shall appear to the satisfaction of the justice, by affidavit made before him, that any person, duly subpœnaed to appear before him in a suit, and whose mileage and one day's attendance has been tendered or paid in advance, shall have failed without a just cause to attend as a witness in conformity to such subpœna, and the party in whose behalf such subpœna was issued, or his agent, shall state that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness.

When depositions allowed to be read on trial of cause.

Sec. 72. The justice shall allow every deposition taken, certified and returned according to the law concerning depositions, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally in court, could have been received; but no such deposition shall be read on the trial, if it shall appear that the reason for taking it no longer exists.

How depositions of persons out of state to be taken.

Sec. 73. Depositions of persons out of this state, to be used before a justice, may be taken in the same manner, and under the same regulations as depositions are authorized by law to be taken within this state, and shall be subject to the same exceptions. The notice given in such case to the adverse party, shall not in any such case exceed forty days.

Depostions used before justices to be allowed in court above.

Sec. 74. In cases of appeal from the judgment of a justice, the depositions used before him on the trial, may be used in the appellate court, and no exception for informality or irregularity, shall be noticed in such court, which was not taken in writing before the trial in the justice's court.

Deposition of witness not resident in county may be taken.

Sec. 75. It shall be a sufficient cause for taking a deposition to be used before a justice of the peace, that the witness is not a resident of the county in which the trial is to be had.

When justice may take the deposition of a

Sec. 76. The justice before whom any civil cause is pending, may on any day on which a trial may be had, after an application witness in attendance.

has been made for an adjournment, and before making an order for an adjournment, on the application of either party showing any cause provided by law therefor, proceed to take the deposition of any witness then in attendance before the justice, and no prior notice shall be required.

How competency of witness objected to shall be tried and determined.

SEC. 77. If a witness, on being produced, shall be objected to as incompetent, such objection shall be tried and determined by the justice; and evidence may be given in support of, or against such objection, as in other cases; or the proposed witness may be examined on oath by the party objecting, and if so examined, no other testimony shall be received, from either party, as to the competency of such witness.

Oath to witness.

SEC. 78. To each witness examined on a trial, the justice shall adminster an oath before any evidence shall be given by him; which oath may be in the following form:

"You do solemnly swear that the evidence you shall give relating to this matter in difference between ——— plaintiff, and ——— defendant, shall be the truth, the whole truth and nothing but the truth, so help you God."

Affirmation.

If any witness declare to the justice that he has conscientious scruples against taking an oath after the above form, then the justice may administer the following affirmation;

"You do solemnly, sincerely and truly declare and affirm, that the evidence you shall give relating to this matter in difference between ——— plaintiff, and ——— defendant, shall be the truth, the whole truth, and nothing but the truth; and this you do under the pains and penalties of perjury."

Justice shall take and file minutes of the evidence.

SEC. 79. It shall be the duty of the justice to take full minutes of all evidence given before him on the trial of a cause, and to file the same among the papers in the case.

Of trial by Jury and the incidents thereto, and of trials by the Justice.

When and on what terms either party may demand a trial by jury.

SEC. 80. In every civil cause brought before a justice of the peace, after issue joined, and before the justice shall proceed to an examination of the testimony, or to inquire into the merits of the cause, either party, on first paying to the justice the jury fees in advance, which shall be taxed against the losing party, may demand that the cause be tried by a jury of six men.

Neglect to make demand to be waiver of right.

SEC. 81. A neglect to make the demand in the next preceding section mentioned, shall be construed to be a waiver of the right to trial by jury.

Names of jurors to be written down; their qualifications.

SEC. 82. Upon such demand of a jury, the justice shall direct the sheriff, or any constable of the county who may be present, to write down the names of eighteen persons of the county qualified to serve as jurors in courts of record, who shall be in no wise of kin to the plaintiff or defendant, nor interested in the suit.

If no officer present, how justice may appoint.

SEC. 83. If no officer be present, the justice may appoint a suitable person to write down the names of such persons, to whom he shall administer an oath or affirmation; which shall be as follows:

"You do solemnly swear, [or affirm] that you will perform the duties required of you according to the best of your abilities without partiality to either party."

Proceedings on striking of jury.

SEC. 84. From such list of names, each party, commencing with the party demanding such jury, may strike out alternately six names, and in case of the absence of either party, or his refusal to strike out, the justice shall appoint some other person to strike out six names.

Justice to issue venire.

SEC. 85. The justice shall issue a venire, requiring the officer to summon the six persons whose names remain upon the said list of names to appear at the time and place mentioned therein, to make a jury for the trial of the action between the parties in the venire mentioned.

Parties may agree upon jury, and proceedings thereon.

SEC. 86. The parties may agree upon six, or any less number of jurors to try the cause; and in such case the justice shall direct in the venire, the summoning of the persons so agreed upon, who when summoned and appearing, shall compose the jury; and the justice shall make a minute of such agreement in his docket.

Summoning of talesmen.

SEC. 87. If any of said jurors shall not attend at the time so summoned to appear, or in case there should be legal objections raised to any of those who shall appear, the justice may order the officer to summon a sufficient number of talesmen to supply the deficiency.

Form of venire.

SEC. 88. The following form of a venire may be used:

——— *County,* } ss.
Town of ——— }

To the sheriff or any constable of said county:

In the name of the State of Wisconsin, you are hereby commanded to summon ——— to be and appear before the undersigned, one of the justices of the peace in and for said county, on the ——— day of ——— at —— o'clock in the —— —— noon of said day, at my office, in said town, to make a jury for the trial of an action of ——— between ——— plaintiff, and ——— defendant. And have you then and there this writ.

Given under my hand, this ——— day of —— 18

J. P., *Justice of the Peace.*

How served and returned.

SEC. 89. The officer shall summon the jurors personally, by reading the venire to them; and shall certify and return his doings thereon to the justice.

When juror to be deemed guilty of contempt, and amount of fine

SEC. 90. Every person who shall be duly summoned as a juror, and shall not appear, or appearing shall refuse to serve, and shall not render a reasonable excuse for his default, shall be deemed guilty of a contempt, and shall be subject to a fine not exceeding ten dollars.

Challenge of jurors for cause, and how same tried and decided

SEC. 91. Either party may challenge any juror summoned as aforesaid, for cause, and may have him sworn to answer questions concerning such challenge, and may prove such cause by other evidence; and such challenge shall be decided by the justice.

Oath of jurors.

SEC. 92. To each juror selected as aforesaid, the justice shall administer the following oath:

"You and each of you do solemnly swear, (or affirm) that you will well and truly try the issue joined between — —— plaintiff, and ——— defendant, and a true verdict give according to law and the evidence given you in court, so help you God."

Jury to sit together, and how proofs, &c. to be delivered.

SEC. 93. After the jury shall have been sworn, they shall sit together, and hear the proofs and allegations of the parties, which shall be delivered in public, in their presence and hearing.

After proofs closed, &c, how jury to be kept, &c.

SEC. 94. After hearing the proofs and allegations of the parties, the jury shall be kept in some convenient place under the charge of a proper officer, until they all agree upon a verdict, or shall be discharged by the justice; and for that purpose, the justice shall administer to such officer the following oath:

Oath of officer having charge of jury.

"You do swear in the presence of Almighty God, that you will, to the utmost of your ability, keep every person sworn on this inquest together, in some private and convenient place, without drink, except water; you will not suffer any person to speak to them, nor speak to them yourself, unless by my order, except it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict, or are discharged by the court; and you will not, before they render their verdict, communicate to any person the state of their deliberations, or the verdict they have agreed upon."

How verdict delivered and judgment entered thereon.

SEC. 95. When the jurors have agreed upon their verdict, they shall deliver the same to the justice, publicly, who shall enter the same in his docket, and enter judgment according to said verdict.

When jury may be discharged, and new venire issued, &c.

SEC. 96. Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, after having been out a reasonable time, cannot agree on their verdict, he may discharge them and issue a new venire, unless the parties consent that the justice may render judgment on the evidence already before him, or that a new trial be had before the justice.

Proceedings when trial is before justice without jury; when no further evidence to be given, &c.

SEC. 97. When the trial is before the justice without a jury, the same proceedings shall be had as in the case of a jury, as far as applicable; and after a cause has been submitted to such justice for his decision, he shall not permit any farther evidence to be given, or suffer any communication from either party, or from any other person, in relation to such suit, except in the presence of the parties, or due notice thereof served on the absent party, until he has rendered his judgment.

When justice takes time to consider, to continue cause, &c.

SEC. 98. Whenever a justice shall take time to consider upon a cause submitted to him for decision, he shall continue the cause to a time to be by him named, not more than seventy-two hours from the time the same is so submitted, at which time he shall enter his judgment.

Rules of evidence same as in courts of record.

SEC. 99. The rules and laws of evidence shall be the same in suits before justices of the peace, as in courts of record in this state.

Of Proceedings by Attachment, and against Garnishees.

When and how creditor may proceed by attachment.

SEC. 100. Any creditor shall be entitled to proceed by attachment in a justice's court, against the property of his debtor, in the cases, upon the conditions, and in the manner provided in this chapter.

What affidavit for attachment to contain.

SEC. 101. Before any such writ of attachment shall be issued, the plaintiff, or some person in his behalf, shall make and file with the justice, an affidavit, stating that the defendant therein is indebted to the plaintiff, in a sum exceeding five dollars, and specifying the amount of such indebtedness, as near as may be, over and above all legal set-offs, and that the same is due upon contract, express or implied, or upon judgment or decree of some court, and containing a further statement, that the deponent knows, or has good reason to believe, either

1. That the defendant is a non-resident corporation; or,
2. That the defendant is not a resident of this state, and has not resided therein for three months immediately preceding the time of making such affidavit:
3. That the defendant has absconded, or is about to abscond from this state:
4. That the defendant has removed, or is about to remove any of his property out of this state, with intent to defraud his creditors:
5. That the defendant resides in any other county, and more than one hundred miles from the residence of the justice:
6. That the defendant contracted the debt under fraudulent representations:
7. That the defendant so conceals himself that the process of summons cannot be served upon him; or,
8. That the defendant has fraudulently conveyed or disposed of, or is about fraudulently to convey or dispose of, any of his property or effects, so as to hinder or delay his creditors.

When attachment returnable.

SEC. 102. In the first five cases mentioned in the preceding section, the writ of attachment shall be returnable in three days; but in all other cases, it shall be returnable as an ordinary summons.

Form of writ of attachment.

SEC. 103. The writ of attachment may be in the following form:

——— *County,* } ss.
Town of ——— }

To the sheriff or any constable of said county:

In the name of the state of Wisconsin, you are commanded to attach the goods and chattels, moneys, effects and credits of ——— ———, or so much thereof as shall be sufficient to satisfy the sum of ———————, with interest and costs of suit, in whomsoever hands or possession the same may be found in your county, and so provide that the goods and chattels so attached, may be subject to further proceedings thereon, as the law requires; and also to summon the said ——— ———, if to be found, to be and appear before me at my office in said town, on the ——— day of ————, A. D. 18—, at ——— o'clock in the ———noon, to answer to ——— ———, in a plea of ————, to his damage one hundred dollars or under.

Given under my hand, at ————, this ——— day of ————, 18—.

J. P., *Justice of the Peace.*

How attachment to be executed.

SEC. 104. The officer shall execute a writ of attachment by summoning the defendant as in case of a summons, if to be found within the county, and by attaching the goods and chattels, money and credits of the defendant, not exempt by law.

How defendant may obtain possession of goods attached.

SEC. 105. When property of the defendant shall be actually seized on attachment, the defendant, or any other person for him, may obtain possession thereof, by giving bond and security to the satisfaction of the officer executing the writ, in double the value of the property so attached, conditioned that the same shall be forthcoming, when and where the justice shall direct, and shall abide the judgment of the justice.

When perishable property &c., is seized, how same to be disposed of.

SEC. 106. When property shall be seized on attachment, which is likely to perish, or depreciate in value before the probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the officer, in the same manner, and on the same notice, as goods are required to be sold on an execution, and the proceeds of such sale shall remain in the hands of the officer, subject to be disposed of as the property would have been if seized upon in specie.

Compensation allowed to officer for keeping property, &c.

SEC. 107. When property is seized on attachment, the justice may allow to the officer having charge thereof, such compensation for his trouble and expenses in keeping and maintaining the same, as shall be reasonable and just.

When defendant is not summoned and his property is attached, notice shall be published.

SEC. 108. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order on his docket, requiring the plaintiff to give notice to the defendant, by publishing in a newspaper, if there be one printed in the county, or by three written or printed advertisements, set up at three of the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff, and that unless he appear before the justice, at some time and place to be mentioned in said notice, not less than twenty nor more than ninety days from the date thereof, judgment will be rendered against him, and his property sold to pay the debt.

Form of notice.

SEC. 109. The notice may be in the following form :

——— *County*, } ss.
Town of ——— } In Justice's Court.
To ——— ———:

You are hereby notified, that a writ of attachment has been issued against you, and your property attached to satisfy the demand of ——— ———, amounting to ———: Now, unless you shall appear before J. P., a justice of the peace in and for said county, at his office in said town, on the ——— day of ———, A. D. 18—, at —— o'clock in the ——— noon, judgment will be rendered against you, and your property sold to pay the debt.

Dated this ——— day of ———, A. D. 18—.

——— ———, *Plaintiff.*

How long notice to be posted or published and how proof thereof made.

SEC. 110. Such notice shall be set up or published, at least fifteen days before the expiration of the time at which the party is required to appear, and the setting up may be proved, either by the return of the officer upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case.

Proceedings if defendant does not appear; bond to be executed before execution issued or money paid, &c.

SEC. 111. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, his default shall be entered by the justice in his docket, and the plaintiff may proceed thereon to final judgment, as in actions commenced by summons; but no execution shall be issued on such judgment, either against the defendant or garnishee, or money paid to the justice thereon, until the plaintiff, or some person in his behalf, shall execute a bond in double the amount of such judgment, to the defendant, with security to be approved by the justice; conditioned, that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt or damages adjudged against him, or any part thereof, the plaintiff will refund the whole, or such part thereof as may be found not justly due him on a review of the case.

Pleadings and proceedings in attachments to be same as on summons upon contracts

SEC. 112. Like pleading of the parties, and like proceedings shall be had, as far as practicable, in suits commenced by attachment, and suits founded on contracts, and commenced by summons.

How attachments may be dissolved on motion of defendant.

SEC. 113. Attachments may be dissolved, on motion made in behalf of the defendant, at any time before final judgment, if the defendant shall appear and plead to the action, and give bond to the plaintiff, with good and sufficient surety to be approved by the justice, in double the amount of property, effects and credits attached, conditioned that if judgment be rendered against him in such suit, he will pay the amount thereof, with costs and interest thereon.

Effect of dissolving attachment, and how suit to proceed.

SEC. 114. When any attachment shall be dissolved, the property and effects attached shall be released, and the garnishees shall be discharged, and the suit proceed as if it had been commenced by a summons only.

On affidavit made, officer to summons person to answer as garnishee.

SEC. 115. If the plaintiff, or other credible person, shall make an affidavit, stating therein that the deponent has good reason to believe that any person (naming him) has property, (describing the same,) money, credits or effects in his possession, belonging to the defendant, or that he is indebted to the defendant, and shall demand of the officer to summon such person as garnishee, the officer shall summon such person, in writing, to appear before the justice on the return day of such attachment, to answer such interrogatories as may be put to him, touching his liability as garnishee.

Form of summons to garnishee.

SEC. 116. The summons mentioned in the next preceding section may be in the following form:

——— *County,* } ss.
Town of ——— }

To ———: Whereas an attachment has been issued by J. P., a justice of the peace of said county, returnable on the —— day of ——— A. D. 18—, in favor of ——— plaintiff, and against ——— defendant; and whereas the plaintiff has made oath, that you have property (describing the same) belonging to the defendant, [or are indebted to him] and demanded that you be summoned as garnishee; therefore in the name of the state of Wisconsin, I hereby attach all the property and credits in your hands belonging to the defendant, and you are hereby commanded to be and appear before the said justice, at his office, in said town, on the return day of said attachment, at —— o'clock in the ——noon of said day, then and there to answer such questions as shall be put to you touching your liability as garnishee. Hereof fail not at your peril.

Given under my hand this —— day of ——— 18—.

————, *Constable.*

Summons, how served and returned, &c.

SEC. 117. The officer shall serve such summons on the garnishee personally, and shall with the writ, return to the justice the affidavit, and the summons issued by him, and shall state the day such summons was served on the garnishee and all other doings on the writ.

Liability of garnishee to plaintiff.

SEC. 118. The garnishee, from the time of the service of such summons, shall stand liable to the plaintiff in attachment, to the amount of the property, money, credits and effects in his hands belonging to the defendant, and the amount of his own indebtedness to the defendant.

How person other than the defendant, in whose hands property is attached, may retain possession of same.

SEC. 119. When property of the defendant, found in the hands or possession of any other person than the defendant shall be attached, such person may retain the possession thereof, by giving bond and security to the satisfaction of the officer executing the writ, in double the value of the property so attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

Service of summons to be deemed commencement of suit against garnishee, &c.

SEC. 120. The service of such summons shall be deemed the commencement of a suit against such garnishee; and upon the return of the constable that such summons has been duly served, the justice shall enter a suit in his docket, in which the plaintiff in attachment shall be plaintiff and the garnishee defendant.

Proceedings against garnishee if when summoned he fail to appear or answer.

SEC. 121. If any garnishee, being duly summoned, fail to appear at the proper time, or appearing, fail to make full and direct answers upon oath to the interrogatories, the justice shall enter his default in his docket, and he may continue the cause to some other day, if necessary, for further proceedings; or on the demand of the plaintiff he may issue a warrant as in civil actions on the oath of a plaintiff, which shall be served in the same manner as other warrants issued by justices of the peace; and the garnishee shall be held thereon until he shall make full and direct answers to the interrogatories.

When and how default of garnishee may be set aside.

SEC. 122. When a default has been entered against a garnishee for not appearing on the return day of a writ of attachment, the same may be set aside by the justice on the application of such garnishee, if he appear and offer to answer before any warrant has been issued against him, but not afterwards, unless he shall first pay all costs up to that time, in the garnishee suit.

Affidavit and summons to be deemed a declaration.

SEC. 123. On the appearance of the garnishee before the justice, it shall not be necessary for the plaintiff to declare against him, but the affidavit and summons aforesaid shall be deemed a sufficient declaration in the cause.

When garnishee &c, to be examined; justice to take and file minutes of testimony.

SEC. 124. The justice shall forthwith, or on the day to which he may adjourn the cause, as in other cases, but not after the time fixed for the trial of the suit in attachment, proceed to examine the said garnishee, and all witnesses produced on either side in that behalf, touching the matters alleged in the affidavit, and shall take minutes of all such answers and testimony, and file the same in the case in his office.

Suit against garnishee to be continued, and when final judgment to be rendered.

SEC. 125. After such examination is concluded, the suit against the garnishee shall be continued until the action against the defendant in attachment shall be determined; and no final judgment shall be rendered against the garnishee, until final judgment be had against the defendant in the attachment.

Garnishee may appear and defend for defendant, &c.

SEC. 126. The garnishee may appear for the defendant in attachment, and defend the same; but such appearance shall not preclude the defendant from any right he may have to a review of said judgment under the provisions of this chapter.

Issues between plaintiff and garnishee to be tried as on summons; value of property found in his hands to be assessed, &c.

SEC. 127. All issues between the plaintiff and garnishee made on the answer, shall be tried as ordinary issues between plaintiff and defendant, as in cases commenced by summons; and if upon the trial of any such issue, property or effects shall be found in the hands of the garnishee, or it shall appear that such garnishee was indebted to the defendant, the justice or jury shall assess the value thereof, and the garnishee may hold the same subject to the further order of the justice.

When garnishee shall recover costs against plaintiff, &c.

SEC. 128. If in the suit instituted against the garnishee, the plaintiff shall be non-suited, or discontinue his suit, or if upon the answer and trial of the garnishee, nothing shall be found due from the garnishee to the defendant; or if in the suit against the defendant in the attachment, the plaintiff shall be non-suited, or discontinue his suit, or if on the trial in such suit, nothing shall be found due from the defendant to the plaintiff, then in each of these cases the garnishee shall recover costs against the plaintiff, and no such costs shall be paid by the defendant.

When costs to be paid out of property delivered by garnishee to officer.

SEC. 129. If the plaintiff recover against the defendant in attachment, and the garnishee deliver to the justice all the property and effects in his possession at the time of the service of the summons, belonging to the defendant, or so much thereof as may be necessary to satisfy said judgment against the defendant, the costs of the garnishee shall be paid out of the property or effects in the hands of the officer.

Proceedings when it shall appear that garnishee is not to pay or deliever to defendant immediately, &c.

SEC. 130. When the answer of the garnishee, or the finding on an issue, shall show that such garnishee is to pay or deliver to the defendant any article or thing, in any other manner, or at any other time, than an immediate delivery or payment, and the demand or claim of the defendant be susceptible of sale by the constable, and is not negotiable without notice, and at the time of the service of the summons, the same belonged to the defendant; then the judgment and order of the justice shall be, that such payment be made, or such article or thing be delivered to the justice for the benefit of the plaintiff; and the same shall be by him ordered to be sold on execution against the defendant.

When judgment shall be rendered against garnishee

SEC. 131. If the garnishee do not deliver over the property, or pay the money so found in his hands and belonging to the defend-

For value of property, &c., and costs.

ant, as provided in the two preceding sections, then judgment shall be given against him for the value of such property or money, and costs of suit in the cause in which he is garnishee, and no such costs shall be paid by the defendant.

If garnishee appear and fail to make full answers judgment shall be entered against him, &c.

SEC. 132. When a garnishee appearing shall fail to make full answers to the interrogatories of the justice, he shall be adjudged to be indebted to the defendant, and judgment shall be entered against him for the amount of the judgment against the defendant, and for all costs in the case; and no such costs shall be paid by the defendant.

Garnishee may plead judgment against him in bar of suit by defendant for same demand.

SEC. 133. In all actions brought by the defendant against the garnishee, for the recovery of any property, credits, money or effects delivered up or paid by order of any judgment rendered under this chapter, except costs rendered against the garnishee, such judgment may be pleaded in bar, and the same shall be conclusive between such parties.

Of Proceedings in replevin.

When replevin may be brought.

SEC. 134. Whenever any goods or chattels shall have been wrongfully taken, or shall be wrongfully detained, the value of which shall not exceed one hundred dollars, an action of replevin may be brought for the recovery thereof, and for the recovery of the damages sustained by reason of such unjust caption or detention, except in the cases hereinafter specified.

Ib.

SEC. 135. Whenever any person might maintain an action for any personal property wrongfully taken, such person may maintain an action of replevin for such property.

How same to be laid and tried.

SEC. 136. Whenever an action of replevin shall be brought for the recovery of goods or chattels, it shall be laid and tried in like manner as actions of trespass for injuries to personal property.

Not to lie for property taken for taxes.

SEC. 137. No replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, in pursuance of any statute of this state.

When not to lie for goods taken under execution.

SEC. 138. No replevin shall lie at the suit of the defendant in any execution or attachment to recover goods or chattels seized by virtue thereof, unless such goods or chattels are exempted, by law, from such execution or attachment. Nor shall replevin lie for such goods or chattels at the suit of any other person, unless he shall, at the time, have a right to reduce into his possession the goods taken.

Affidavit to be filed with justice, and what to contain.

SEC. 139. No writ of replevin shall be issued until an affidavit shall be filed with the justice, made by the plaintiff, or some one in his behalf, stating that such plaintiff is then lawfully entitled to the possession of certain personal property, giving a particular description thereof, and of the value thereof, and that the same has been unjustly taken and is unjustly detained, (or that the same is unjustly detained, as the case may be,) by the defendant, naming him, and that the same has not been taken for any tax levied by virtue of any law of this state, nor seized under any execution or attachment against the goods and chattels of such plaintiff liable to execution.

To be commenced by writ, when returnable, and form of same.

SEC. 140. Actions of replevin shall hereafter, in all cases, be commenced by writ, which shall be issued by the justice to whom it shall be made returnable, and shall be substantially in the following form, and shall be made returnable on the third day after it shall issue, Sundays excepted :

——— *County*, }
Town of——— } *ss.*

To the sheriff or any constable in said county :

Whereas ——— complains that ——— has taken and does unjustly detain, (or does unjustly detain, as the case may be,) (here particularly describe the goods mentioned in the affidavit of the complainant;) therefore, in the name of the State of Wisconsin, you are hereby commanded to cause the same goods and chattels to be replevied without delay, and to hold the same subject to the further order of the court; and also that you summons the said ——— to be and appear before me, one of the justices of the peace, in and for said county, at my office in said town, on the —— day of ——— A. D. 18—— at —— o'clock in the —— noon, to answer the complaint of the said ———.

Given under my hand at —— this —— day of —— A. D. 18—.

J. P., *Justice of the Peace.*

How writ served.

SEC. 141. The writ shall be served on the defendant by delivering to him personally, if he can be found, a copy of the same ; if he cannot be found, it may be served by leaving the same at his usual place of abode, with his wife, or with some person of proper age, belonging to his family, at least two days before the return day thereof.

How property taken when in dwelling house, &c.

SEC. 142. If the property to be replevied, or any part thereof, be secured or concealed in any dwelling house or other building or inclosure, the officer shall publicly demand deliverance thereof, and if the same be not delivered by the defendant or some other person, he shall cause such house, building or inclosure to be broken open, and shall make replevin according to the writ; and if necessary, he shall take to his assistance the power of his county.

How plff to proceed if goods not replevied.

SEC. 143. If the goods and chattels, specified in any writ of replevin, have not been replevied, the plaintiff may proceed in the action for the recovery of the said goods and chattels, or the value thereof in an action of trover.

Officer to return writ and keep the goods.

SEC. 144. The officer shall return the writ immediately after the service thereof, and shall keep the goods and chattels in his possession, till the cause is decided by the justice.

What to state in his return.

SEC. 145. The officer shall state in his return fully in what manner he has executed the writ.

The complaint to be deemed the declaration; how deft. to plead, and effect of the general issue.

SEC. 146. The complaint made in the affidavit, shall be deemed the declaration of the plaintiff, and the defendant may plead thereto as in other cases; and if he plead that he is not guilty of the charge alleged against him, this plea shall put in issue, not only the right of the plaintiff to the possession of the property mentioned in the declaration, but also the wrongful taking and detention thereof.

Proceedings in, how to be conducted

Sec. 147. The suit shall be subject to the same usages, rules and regulations as other cases before a justice's court, as far as the same are applicable.

How and on what terms adjournment granted.

Sec. 148. In an action of replevin, no adjournment shall be allowed to either party, unless such party shall satisfy the justice, in the same manner as in case of an application for a second adjournment, in other cases; and such party shall also enter into a bond to the opposite party, with sufficient security, to be approved by the justice, conditioned that such applicant will pay all costs and damages which shall be adjudged against such applicant on a trial of the cause.

Security may be entered on docket, and form of same.

Sec. 149. The security in the preceding section mentioned may be entered on the docket of the justice in the following form:

"I do hereby agree to pay all costs and damages which shall be adjudged against ———— in this suit. A. B.

"I hereby approve the security, the said A. B. having justified, (or been accepted by the ————) J. P., *Justice.*

Plaintiff to prove allegations of complaint, and what justice or jury to find.

Sec. 150. In all actions of replevin, it shall be necessary for the plaintiff, whether the defendant be present or not, to prove all the allegations of his complaint; and on such proof, the justice or jury shall find as well the value of the goods and chattels specified in the complaint, and assess the damages which he has sustained by the unjust taking or detention of the property replevied, as that the plaintiff is entitled to the right of possession of such property; and in such case, the justice shall immediately enter an order in his docket, that the officer deliver the goods and chattels replevied to the plaintiff, and adjudge that he recover such damages and costs, and shall issue execution therefor.

What justice to order and adjudge

When justice or jury to assess damages to defendant; justice to order re-delivery of property, &c.

Sec. 151. If the plaintiff shall discontinue his suit, become nonsuit, or shall otherwise fail to prosecute his suit to final judgment; or if on the trial of the issue joined, the justice or jury shall find for the defendant; or if on such trial, the justice or jury shall find the goods and chattels replevied to be of a greater value than the amount over which a justice has jurisdiction, then, in each of these cases, the justice or jury shall assess adequate damages for the caption and detention of the goods and chattels replevied, and the justice shall immediately enter an order in his docket, that the officer deliver the said goods and chattels to the defendant, and adjudge that he recover such damages and costs, and shall issue execution therefor.

Notice to be given, if defendant not duly summoned.

Sec. 152. If the officer return on the writ of replevin, that the defendant has not been duly summoned in either of the modes herein before prescribed, and that he has replevied the goods and chattels mentioned in the writ; then, if the defendant do not appear to the action at the return of the writ, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant, as in case of a defendant not summoned, whose goods have been attached; such notice shall contain a full description of the goods and chattels replieved; and its publication may be proved in the manner in which a notice in attachment is proved.

Proceedings, if defendant has been notified and does not appear,

Sec. 153. When the defendant has been notified as aforesaid, and shall not appear and answer to the action, his default shall be entered by the justice in his docket, and the plaintiff may proceed thereon to final judgment as if he had been duly summoned; but no execution shall issue on such judgment for costs and damages, nor shall any order be made for the delivery of the goods and chattels to the plaintiff, until such plaintiff or some person in his behalf, shall execute a bond to the defendant, in double the value of the property replevied, with security to be approved by the justice, conditioned, that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the same, the plaintiff will make return of said property, if return be adjudged, or will pay the value thereof, and all costs and damages which may be adjudged against him on a review of the case.

Bond to be executed before execution issues, &c.

SEC. 154. If the goods and chattels specified in the declaration shall not have been replevied, such plaintiff, in case he shall recover judgment upon the hearing of the case, shall be entitled, in addition to his judgment for damages and costs, to a further judgment, that such goods and chattels be replevied and delivered to him without delay, or in default thereof, that such plaintiff do recover from the defendant the value of such goods and chattels, as the same shall have been assessed by the jury or justice on the trial, or upon the hearing.

If goods not replevied, when plaintiff to have judgment for replevy and delivery of same, &c.

SEC. 155. The execution to be issued upon such judgment shall command the officer to levy the plaintiff's damages and costs of the goods and chattels of the defendant, as in other executions against property, and also to replevy the goods and chattels described in the declaration, which shall also be specified in the execution, and to deliver them to the plaintiff, if they can be found within his county; and if the same cannot be so found, then that he levy the value of such goods and chattels, specifying the same, together with the aforesaid damages and costs, of the goods and chattels of the defendant, as above provided.

What execution issued on such judgment to command.

SEC. 156. The officer shall proceed in the same manner to collect any moneys directed to be collected upon such execution, as upon executions against property in personal actions; and he shall possess the same powers in respect to the replevying of the property described therein, as are herein provided upon the execution of writs of replevin. If the goods and chattels described in the execution are replevied and delivered to the plaintiff, they shall be irrepleviable by the defendant.

How officer to execute same.

When goods irrepleviable.

SEC. 157. In every action of replevin, if the justice or jury shall find the property of part of the goods and chattels replevied to be in the plaintiff, and the residue thereof to be in the defendant, they shall find and certify in their verdict the value of the part belonging to the plaintiff, and also, the value of the part belonging to the defendant, as it was at the time it was replevied; and in such case, the defendant shall have judgment for the value of his part of the property replevied, or judgment of return of such part in the discretion of the court.

Verdict and judgment when property of part of goods found in plaintiff and part in defendant.

SEC. 158. Whenever upon the trial of any action of replevin, it shall appear that one party has a lien or claim upon the property in question, or a part thereof, to a part of its value only, and that the right of property in the same, subject to such lien or claim, shall be in the other party, in such case the verdict and judgment shall be according to the rights of the parties, and it shall be dis-

Judgment where one party has a lien, and the other the right of property in the goods.

cretionary with the court whether the judgment shall be for the return of the property or for damages.

Judgment to be rendered against principal and sureties.

SEC. 159. Whenever judgment shall be rendered against either party in an action of replevin, it shall be rendered against him and the sureties in the bond given in his behalf in pursuance of the provisions of this chapter, if any such bond shall have been given, and execution shall issue against all, with the like effect as if they had been parties to the suit.

In suit against sheriff, constable to execute writ.

SEC. 160. Whenever an action of replevin shall be brought by or against the sheriff of any county, the writ, and all process in the cause shall be awarded to and executed by any constable of the county.

Of Proceedings by and against Corporations.

What actions against corporations cognizable before justices, &c.

SEC. 161. All actions of assumpsit, debt, covenant and trespass on the case against corporations, where the amount claimed or matter in controversy shall not exceed one hundred dollars, shall be cognizable before a justice of the peace, in like manner, and with like restrictions, as the same actions are or may be by law cognizable before a justice of the peace, when brought against an individual.

Summons to be first process, and how served, &c.

SEC. 162. The first process against a corporation shall be by summons, and shall be served by leaving a true and attested copy thereof with the president, cashier, secretary, or other principal officer of such corporation, or by leaving such true and attested copy at the banking house, counting room or office of such corporation, or at the last and usual place of abode of such president, cashier or other principal officer, at least five days before the return day thereof; and upon perfecting such service, and legal return thereof being made, such corporation shall be deemed in court, and like proceedings, as near as may be, shall be thereupon had as in cases of suits between individuals.

When execution may issue.

SEC. 163. When judgment shall be rendered against a corporation, no security for stay of execution shall be entered except at the option of the plaintiff, and execution may issue forthwith.

Suits by or against towns, to be commenced in adjoining town.

SEC. 164. When any suit in a justice's court, shall be commenced by or against any town or town officer, in his official capacity, the same shall be commenced before a justice of the peace elected in any adjoining town.

How first process served.

SEC. 165. The first process against such town shall be served upon the town clerk and chairman of the board of supervisors, if to be found, and if not to be found, by leaving a copy thereof at the office of the town clerk, at least six days before the return day thereof.

Of Judgments, and filing Transcripts thereof.

When justice to proceed to hear proofs of plaintiff, and how to render judgment.

SEC. 166. If the defendant shall fail to appear within one hour after the time specified for the return of process duly served, or after the hour of adjournment, the justice shall proceed to hear the proofs of the plaintiff, and render judgment thereon according to law and equity, as the very right of the case may appear.

How, in what cases, and to what amount, judgment by confession may be entered before justice.

Sec. 167. A judgment by confession may be entered before a justice of the peace, in any sum not exceeding two hundred dollars, without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, if a statement in writing be made, signed by the defendant and verified by his oath to the following effect:

1. It must state the amount for which judgment may be entered, and authorize the entry of judgment therefor by the justice:
2. If it be for money due or to become due, it must state concisely the facts out of which it arose, and must show that the sum confessed therefor is justly due or to become due:
3. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefor does not exceed the same.

Statement and affidavit to be filed with justice

Sec. 168. The statement and affidavit made as aforesaid, in all cases where judgment is entered by confession, shall be filed with the justice.

When judgment of non-suit shall be rendered against plaintiff.

Sec. 169. Judgment of non-suit, with costs, shall be rendered against a plaintiff prosecuting an action before a justice of the peace, in the following cases:

1. If he discontinue or withdraw his action:
2. If he fail to appear on the return of any process, within one hour after the same was returnable:
3. If after an adjournment, he fail to appear within one hour after the time to which the adjournment shall have been made:
4. If he become non-suited on the trial.

When judgment on the merits shall be rendered for defendant.

Sec. 170. Judgment for the defendant, with costs, shall be rendered, whenever a trial has been had, and it be found by verdict, or by the decision of the justice, that the plaintiff has no cause of action against the defendant.

Judgment to be with costs, unless otherwise provided.

Sec. 171. Whenever a judgment shall be rendered by a justice against any party, unless herein otherwise provided, it shall be with costs of the suit.

When justice to render judgment forthwith.

Sec. 172. In cases where a plaintiff shall be non-suited, or withdraw his action, or where judgment shall have been confessed, and in all cases where a verdict shall be rendered, or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment, and shall enter the same in his docket.

If sum found exceed a justice's jurisdiction, party may release excess.

Sec. 173. If any sum be found in favor of a party, either by the verdict of a jury, or upon hearing of the cause before a justice, exceeding the sum for which a justice is authorized to give judgment, such party may remit or release the excess, and take judgment for the residue.

How judgment to be entered, if such sum found be on plea of set-off which is indivisible, &c.

Sec. 174. When such verdict shall be found on a plea of set-off of the defendant, and such set-off shall be indivisible, the justice may at the request of the defendant, enter a judgment for such sum as he has jurisdiction, and if such set-off be in writing, he shall indorse the amount of the claim of the plaintiff and the judgment allowed by him on such writing.

Balance due on such set-off may be recovered.

Sec. 175. The plea and allowance of a set-off in the last preceding section mentioned, shall not be a bar to any suit brought for the balance of such set-off; but the same may be recovered in any court having jurisdiction thereof.

When new trial may be granted on suits commenced by attachment or replevin.

SEC. 176. A new trial may be granted at any time within one year from the rendition of a judgment by a justice of the peace, when such judgment has been rendered in a suit commenced in replevin, or by attachment against the goods and chattels of the defendant, upon a publication of notice, where no service has been had, and the defendant did not appear at the trial.

Proceedings to obtain new trial in such cases.

SEC. 177. The manner of setting aside and disproving such judgment, shall be by petition subscribed and sworn to by the defendant in the original suit, his agent or attorney, and addressed to the justice before whom the same was rendered, or the justice or court into which the judgment has been received, setting forth the grounds on which such judgment ought to be reversed.

Ib.

SEC. 178. If the court to which such petition is addressed, is satisfied that the same contains sufficient to reverse said judgment in whole or in part, it shall make an order setting forth the time and place, and the court before which, a review of such judgment will take place; and a copy of such petition and order shall be served on the plaintiff at least ten days previous to the time therein fixed for the new trial.

Proceedings on trial same as in other cases.

SEC. 179. Upon a review of such judgment, the same proceedings shall be had as in other trials.

How judgment rendered on joint contracts, &c., where but one of defendants served with process.

SEC. 180. In actions against two or more persons jointly indebted upon any joint obligation, contract or liability, if the process issued against all the defendants shall have been duly served upon either of them, the defendant so served shall answer to the plaintiff, and in such case, the judgment, if rendered in favor of the plaintiff, shall be against all the defendants, in the same manner as if all had been served with process.

Force and effect of such judgment in evidence.

SEC. 181. Such judgment shall be conclusive evidence of the liability of the defendant who was personally served with process in the suit, or who appeared therein; but against every other defendant, it shall be evidence only of the extent of the plaintiff's demand, after the liability of such defendant shall have been established by other evidence.

When and how bail may obtain judgment against principal.

SEC. 182. After the return of such execution, the bail shall be entitled, on motion, to a judgment before the justice, for the amount collected from him in satisfaction of such execution, with interest thereon at twelve per cent per annum; and such return of the officer, upon motion, shall be evidence of the facts therein stated: no such motion shall be made after three months from the return of the execution.

Proceedings where judgment stayed after execution issued

SEC. 183. If a judgment be stayed in the manner above prescribed, after an execution has been issued thereon, the justice shall revoke such execution in the same manner, and with like effect, as he is hereinafter directed to revoke an execution after an appeal has been allowed; and if the defendant has been committed, shall order him discharged from custody.

When justice to issue certified transcript of judgment; duty of clerk of court thereon.

SEC. 184. Every justice, on the demand of any person in whose favor he shall have rendered judgment for more than ten dollars, exclusive of costs, shall give to such person a certified transcript of such judgment; and the clerk of the circuit court of the same county in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the circuit court judgments and decrees, and shall note therein the time of filing such transcript.

When transcript filed, judgment to be a lien, &c.

SEC. 185. Every such judgment, from the time of such filing of the transcript thereof, shall have the same lien on the real estate of the defendant in the county, as a judgment of the circuit court of the same county, shall be equally under the control of the circuit court, and shall be carried into execution in the same manner and with the like effect, as the judgments of such circuit court; but no execution shall be issued thereon out of the circuit court, until an execution shall have been issued by a justice, and returned that the defendant has no goods or chattels whereon to levy the same.

When execution may issue thereon.

Form of transcript.

SEC. 186. The transcript of a justice's judgment may be in the following form:

Justice's Court.

A. B.
vs. } ———— *County*, ss.
C. D.

March 31, 1849.

Judgment rendered for the plaintiff, for the sum of.... $
Costs,..
Costs of copy,................................ 0 25

I certify the above to be a true copy of a judgment rendered before me, in the above entitled cause, as appears from my docket.

Dated at ————, this ——— day of ————, 18—.

J. P., *Justice of the Peace.*

Of Executions; of the Stay thereof, and Proceedings thereon.

When and how execution to be issued.

SEC. 187. Upon every judgment rendered by a justice, execution shall be issued by such justice in the manner hereinafter prescribed, at any time, upon demand, within two years from the rendition of such judgment.

When may be issued against body of defendant.

SEC. 188. An execution may be issued by the justice against the person of the defendant, when the action in which judgment is rendered, is founded in tort, or is for a penalty upon a statute, and in no other.

What execution shall command the officer.

SEC. 189. The execution shall command the officer to levy the debt or damages, together with the interest thereon, and the costs, of the goods and chattels of the person against whom the execution shall be granted, (except such as are exempted by law from execution,) and to pay the money within thirty days from the date, to the justice who issued the execution, to render to the party who recovered the same; and if the execution be issued against a male person, in case where imprisonment is authorized by law, it shall command the sheriff or constable, that, if no goods or chattels can be found, or not sufficient to satisfy such execution, then to take the body of the person against whom the execution shall be issued, and convey him to the common jail of the county, there to remain until such execution shall be satisfied and paid, or he be otherwise discharged according to law.

Form of execution.

SEC. 190. Executions may be in the following form :

Execution against the goods.

——— *County,* } ss.
Town of ——— }

To the sheriff or any constable of said county :

Whereas judgment against ——— for the sum of ——— lawful money of the United States, and for ——— costs of suit, was recovered the —— day of ——— A. D. 18 —— before me, at the suit of ——— : these are, therefore, in the name of the State of Wisconsin, to command you to levy distress on the goods and chattels of the said ———, (excepting such as the law exempts,) and make sale thereof, according to law in such case made and provided, to the amount of the said sums, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said ——— for his said judgment and costs. Hereof fail not under the penalty of the law.

Given under my hand the —— day of ——— in the year 18 —.

J. P., *Justice of the Peace.*

Execution against goods and the body.

Ib.

——— *County,* } ss.
Town of ——— }

To the sheriff or any constable of said county :

Whereas judgment against ——— for the sum of ——— lawful money of the United States, and for ——— costs of suit, was recovered the —— day of ——— A. D. 18 —— before me, at the suit of ——— ; these are, therefore, in the name of the State of Wisconsin, to command you to levy distress on the goods and chattels of the said ——— (excepting such as the law exempts,) and make sale thereof according to law in such case made and provided, to the amount of the said sums, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said ——— for his said judgment and costs ; and for want of such goods and chattels whereon to levy, take the body of the said ———, and him convey and deliver unto the keeper of the common prison of said county, who is hereby commanded to receive and keep the said ——— in safe custody in said prison, until the aforesaid sums and all legal expenses be paid and satisfied, or until he be discharged thence by due course of law. Hereof fail not, under the penalty of the law.

Given under my hand the —— dayof ——— in the year 18 —

J. P., *Justice of the Peace.*

Ib

——— *County,* }
Town of ——— } ss.

To the sheriff or any constable of said county :

Whereas judgment against ——— for the sum of ——— lawful money of the United States, and ——— costs of suit, was recovered the —— day of ——— A. D. 18 —— before me, at the suit of ———; and whereas, on the —— day of ——— A. D. 18 —, ——— became security to pay the said judgment, with interest on the same, in ——— months from the —— day of ——— aforesaid, agreeable to law, as appears of record, in the payment of which the said ——— and ——— have failed : these are, therefore, in the name of the State of Wisconsin, to command you to levy distress on the goods and chattels of said ——— and ———, (excepting such as the law exempts,) and make sale thereof, according to the law in such cases made and provided, to the amount of such sums, with interest thereon, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said ——— for his said judgment and costs. Hereof fail not under the penalty of the law.

Given under my hand this —— day of ——— in the year 18 —

J. P. *Justice of the Peace.*

How long executions may be stayed.

SEC. 191. The execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided, and for the following periods of time, to be calculated from the date of the judgment, but a longer period may be agreed upon :

1. If the judgment be for a sum not exceeding ten dollars exclusive of costs, one month ;
2. If it be for any sum above ten dollars, and not exceeding thirty dollars, two months ;
3. If it be for any sum above thirty dollars, and not exceeding fifty dollars, three months ;
4. If it be for any sum above fifty dollars, four months.

Recognizance to be executed to entitle to stay.

SEC. 192. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after the rendition of the judgment, enter into a recognizance before the justice, to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment.

To be signed, and form of same.

SEC. 193. Such recognizance must be signed by the person entering into the same, and may be in the following form :

"I ——— acknowledge myself indebted to ——— in the sum of —— dollars, to be void upon this condition : Whereas ——— obtained a judgment before ——— a justice of the peace of the town of ———, in the county of — , on the —— day of ——— 18 —— against ———; now if such judgment, costs and interest shall be paid at the expiration of ——— months from the time it was rendered, this recognizance shall be void. A. B."

CHAPTER 88.

When execution to issue against principal and bail; duty of officer thereon.

SEC. 194. If at the expiration of such stay, the judgment be not paid, the execution shall issue against both principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money collected by him on the execution, was collected by him from the bail, and the time when the same was received.

What entry justice to make in his docket on issuing execution.

SEC. 195. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt or damages and costs, separately; and the officer receiving such execution, shall indorse thereon the time of the receipt of the same.

When and how execution may be renewed; amount paid to be indorsed.

SEC. 196. If an execution be not satisfied, it may, at the request of the plaintiff be renewed from time to time, either before or after the return day thereof, by the justice issuing the same, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied, the indorsement of renewal, shall express the sum due on the execution. Every such indorsement shall renew the execution in full force in all respects, for thirty days and no longer, and an entry of such renewal shall be made in the docket of the justice.

Renewal to extend thirty days, &c.

How execution issued against joint debtors when process not served on all.

SEC. 197. When a judgment shall be obtained against joint debtors, upon process which was not served upon all the defendants, execution may be issued in form against all; but the justice shall indorse thereon the names of such of the defendants who did not appear in the suit, and were not served with process of warrant, summons or attachment.

How same shall be executed.

SEC. 198. Such execution shall not be served upon the persons of the defendants whose names are indorsed thereon; nor shall it be levied upon the sole property of any defendant, who neither appeared in the suit nor was served with such process; but it may be levied and collected of the several property of any defendant who appeared or was served with process, or of the joint or co-partnership property of all the defendants.

When new or further execution may be issued.

SEC. 199. If any execution be returned unsatisfied in whole or in part, and shall not be renewed, a further execution, for the amount remaining due, may be issued.

Duty of officer on taking goods; same to be bound from time of seizure.

SEC. 200. The officer, after taking goods and chattels into his custody by virtue of an execution, shall indorse thereon the time of levying the same, and a description or list of the property, and such goods and chattels shall be bound from the time they are seized in execution.

When and how sale to be advertised.

SEC. 201. The officer shall without delay, give public notice by at least three advertisements, signed by himself, and put up at three public places in the town, where the property is sold, of the time and place when and where the same shall be exposed to sale; which notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

When, where and how, goods to be sold.

SEC. 202. At the time and place so appointed, or at such other time as the sale may be adjourned to, within the life of the execution, the goods and chattels being present, and pointed out to the inspection and examination of the bidders, the officer shall expose them to sale at vendue to the highest bidder.

Return of execution; amount collected to be paid over, and surplus returned.

SEC. 203. The officer shall return the execution, and pay the debt or damages and costs levied, to the justice who issued the same, or in case of his death, absence or removal from office, then to the justice having the custody of his docket, returning the surplus, if any, to the person against whom the execution issued.

Purchase by constable on sale by him to be void.

SEC. 204. No constable shall, directly or indirectly, purchase any goods or chattels, upon any sale made by him upon execution; and every such purchase shall be absolutely void.

When body of defendant to be taken, and how to be kept.

SEC. 205. For want of goods and chattels whereon to levy, the officer shall, if the execution require it, take the body of the person against whom the execution shall have issued and convey him to the common jail of the county; and the keeper thereof is hereby required to keep such person in safe custody, in jail, until the debt or damages and costs, shall be paid, or he be thence discharged by due course of law.

When and how creditors, &c., of defendant may be garnisheed.

SEC. 206. If there be no property found, or if the goods and chattels levied on are not sufficient to satisfy such execution, and if the plaintiff or other credible person shall make an affidavit stating, that he has good reason to believe that any person has property in his possession belonging to the defendant, or is indebted to him, and shall demand of the officer to summon such person as garnishee; the officer shall summon such person in writing to appear before the justice on the return day of such execution to answer such interrogatories as may be put to him, touching his liability as garnishee.

Duty of officer in summoning garnishee, &c.

SEC. 207. the officer on the receipt of such affidavit, shall make out a summons as he is required to do in case of a garnishee in attachment, and shall serve the same, not less than six days before the return day of the execution, and shall return to the justice the affidavit of the plaintiff, and his own doings thereon; and the like proceeding shall be had before the justice, against such garnishee, as in a suit instituted by attachment in a justice's court.

Officer to receive and receipt money tendered on execution.

SEC. 208. The officer who shall hold any execution, shall receive all money tendered in payment thereof, and shall indorse the same on the execution, and give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded.

Females not to be imprisoned on executions issued by justices in civil causes.

SEC. 209. No female shall be arrested or imprisoned, upon any execution issued from a justice's court, in a civil cause.

When and how judgment may be recovered against officer for amount of execution, &c.

SEC. 210. If an officer neglect to return an execution, within five days after the return day thereof, or shall neglect to serve the same, the party in whose favor the same was issued, may maintain an action of debt against such officer, and shall recover therein the amount of the execution, with interest from the time of the rendition, of the judgment upon which the same was issued; and if a judgment be obtained in such suit against the officer, execution shall immediately issue thereon.

No levy or sale made after execution expires unless renewed.

SEC. 211. An officer shall not levy upon, or sell any property, or do any other act by virtue of any execution, after the time limited therein for its return; unless such execution shall have been renewed. Nor shall any officer do any act under a renewed execution, after the expiration of the time, or times, for which the same may have been renewed.

Proceedings against constable and his sureties when he neglects to pay over moneys collected.

SEC. 212. If moneys be collected by a constable upon an execution, and not paid over by him according to law; an action of assumpsit may be maintained by the party entitled to such money, in his own name, upon the instrument of security given by such constable and his sureties, according to law, and in such suit, the amount so collected, with interest from the time of collection, shall be recovered. Execution shall be immediately issued upon the judgment in such suit.

Of the Removal of Causes by Certiorari, and Proceedings thereon.

When party may remove cause to county court on certiorari.

SEC. 213. If any person shall conceive himself injured by error in any process, proceedings, judgment or order given by any justice of the peace within this state, it shall be lawful for such person, where the judgment shall not exceed fifteen dollars, to remove such judgment to the county court, as hereinafter provided.

Proceedings to remove same, and within what time application to be made.

SEC. 214. The party applying for such certiorari, his agent or attorney, shall within twenty days after the rendition of such judgment, present to a judge of a court of record, or court commissioner, an affidavit, stating that in his belief, there is reasonable cause for granting such certiorari for error in such judgment, (setting forth the ground of error alleged,) and that the application is made in good faith, and not for the purpose of delay; and shall, together with one or more sureties, to be approved by the judge or commissioner, enter into a recognizance before a judge or some justice of the peace, to the adverse party, in double the amount of the judgment and costs rendered before the justice.

Recognizance to be signed and attested; form of same.

SEC. 215. Such recognizance must be signed by the persons entering into the same, and attested by the judge or justice, and shall be in the following form:

We ——— ——— and ——— ——— acknowledge ourselves to owe and be indebted unto ——— ———, in the sum of ——— dollars, to be levied of our several goods and chattels, lands and tenements, to the use of ——— ———, or his assigns, if default be made in the condition following, to wit: Whereas the said ——— ——— has applied for a certiorari from the judgment of ——— ———, a justice of the peace of the county of ——— ———, rendered the ——— day of ——— A. D. 18—, in an action between ——— ——— plaintiff, and ——— ——— defendant; now if the writ of certiorari be allowed, and the said ——— ——— shall prosecute the same with all due diligence to a judgment in the county court, and abide the order the court may make therein, then this recognizance to be void, otherwise of force.

Taken and acknowledged before me
this ——— day of ——— A. D. 18—.
Judge, (or Justice.)

C. D.
E. F.
G. H.

When and how writ to be allowed.

SEC. 216. If such judge or commissioner shall be satisfied that any error affecting the merits of the controversy, has been committed by the justice or jury in the proceeding, verdict or judgment, he shall allow a writ of certiorari, by indorsing on the affidavit his allowance thereof.

Affidavit, &c, to be filed with the clerk of court who shall thereupon issue writ.

SEC. 217. The affidavit and recognizance, so given, shall be filed with the clerk of the county court for the county, who shall thereupon issue a writ of certiorari, commanding the justice, rendering such judgment to make return as to all the facts contained in such affidavit, and of all the testimony and proceedings in the case.

Writ to be served on justice within ten days after allowance.

SEC. 218. The certiorari so allowed, shall be served within ten days after its allowance, upon the justice by whom the judgment was rendered.

Service of writ to stay further proceedings, and execution, if issued.

SEC. 219. Upon the service of a writ of certiorari upon the justice as aforesaid, all further proceedings at law in such case shall cease, and if execution shall have issued on such judgment upon which certiorari is allowed, the justice shall immediately recall the same.

Copy of affidavit to be served with writ; duty of justice in making return.

SEC. 220. Upon the service of a writ of certiorari to reverse a judgment as aforesaid, it shall be the duty of the party serving the same, to deliver at the same time to the justice a copy of the affidavit on which the certiorari was procured; and the justice shall make a special return as to all the facts contained in such affidavit, and of the testimony and proceedings in the case, and annex a copy thereof to the writ; and shall file the same with the clerk of the county court, within ten days after service of the writ, together with all the papers in the suit; and he shall also certify the time when the writ was served upon him.

Court may compel justice to make or amend return.

SEC. 221. The county court shall have power to compel such justice to make or amend such return by rule, attachment or mandamus, as the case may require.

When and how cause may be brought on to argument.

SEC. 222. When such certiorari and return shall be so filed with the clerk, the cause may be brought on to argument at any time thereafter, according to the rules of court.

How county judge to proceed in giving judgment.

SEC. 223. The judge of the county court shall proceed and give judgment in the cause as the right of the matter may appear, without regarding technical omissions, imperfections or defects in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part; and may make any such final order, or judgment as he shall deem proper, in furtherance of justice.

When judgment below has been collected and reversed, how restitution to be made.

SEC. 224. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, the court shall award restitution of the amount so collected, with interest from the time of collection, and execution may issue thereon.

Certiorari at common law may be to the supreme court.

SEC. 225. Nothing in this chapter contained, shall prohibit any party from bringing a common law certiorari to the supreme court at any time within which a writ of error may be brought.

Of Appeals and Proceedings thereon.

When appeals may be brought to the county court.

SEC 226. Any party to a final judgment rendered by a justice of the peace, where the recovery shall exceed fifteen dollars, except judgment of non-suit, exclusive of costs, conceiving himself aggrieved thereby, may appeal therefrom to the county court of the

CHAPTER 88.

county, where the same was rendered, in the following cases:

1. Where the judgment was rendered upon an issue of law joined between the parties:

2. Where it was rendered on an issue of fact joined between the parties, whether the defendant was present at the trial or not.

When party may appeal where judgment is less than $15.

SEC. 227. A party may appeal from a judgment of a justice, where the judgment is less than fifteen dollars, in the following cases:

1. Where the claim of either party, as proved at the trial shall exceed fifty dollars:

2. Where the defendant did not appear and plead, and final judgment was rendered for the plaintiff, on the merits of his claim.

Requisites to be complied with to obtain an appeal.

SEC. 228. No appeal shall be allowed, in any case, unless the following requisites are complied with, within ten days after judgment rendered:

1. The appellant or some person for him, must make an affidavit, stating that the appeal is made in good faith, and not for the purpose of delay, and present the same to the justice before whom the cause was tried:

2. The applicant, or some person for him, together with one or more sureties to be approved by the justice, must enter into a recognizance before a justice of the peace, to the adverse party, in a sum not less than fifty dollars, and in double the amount of the judgment rendered, to secure the judgment and costs of appeal.

Recognizance to be signed and attested; form of same.

SEC. 229. Such recognizance must be signed by the persons entering into the same, and attested by the justice before whom it is taken, and shall be in the following form:

We ——— ——— and ——— acknowledge ourselves to owe and be indebted unto ——— in the sum of——— dollars, to be levied of our several goods and chattels, lands and tenements, to the use of ——— or his assigns, if default be made in the conditions following, to wit: Whereas the said ——— has appealed from the judgment of———, a justice of the peace in the county of ———, rendered the —— day of ——— A. D. 18—, in an action between ——— ——— plaintiff, and ——— defendant: now if the said ——— shall prosecute his appeal with all due diligence to a judgment, in the county court, and if judgment be rendered against him in such court, pay the amount of such judgment, including costs of appeal, with interest; or if his appeal shall be dismissed or discontinued, that he will pay the judgment recovered against him before the justice, and the interest thereon, with costs of appeal, and abide the order the court may make therein, then this recognizance to be void, otherwise of force.

Taken and acknowledged before me
this —— day of ——— A. D. 18—.
J. P. *Justice.*

C. D.

Duties of justice in taking recognizance.

SEC. 230. No justice of the peace shall indorse his satisfaction on any such recognizance, or receive the same on appeal, unless the person entering into the same shall justify his responsibility on oath, and answer any question touching his pecuniary circumstances, which the justice may deem proper to put, or the opposite party or his attorney shall admit the pecuniary responsibility of such surety to be sufficient; and it shall be the duty of the justice, at the time such recognizance is received, to certify thereon whether the surety justified or his responsibility was admitted.

Fees of justice to be paid.

SEC. 231. The party so appealing, his agent or attorney, shall, at the time of presenting the affidavit and recognizance, pay to the justice his fees in the case, and one dollar for making and filing his return to the county court, and for taking the affidavit and recognizance, and approving the same.

Further proceedings to be suspended, and if execution issued, certificate of appeal to be granted.

SEC. 232. Upon an appeal being made according to the foregoing provisions, all further proceedings on the judgment before the justice shall be suspended; and if, in the meantime, execution shall have been issued, the justice shall give the appellant a certificate that an appeal in the cause has been duly made.

Effect of certificate on presentation.

SEC. 233. On such certificate being presented to the officer holding the execution, such officer shall forthwith release any goods and chattels levied on, or release the body of the appellant, if taken; and if such appellant has been committed to prison, the jailor shall, upon such certificate being served upon him, forthwith release such appellant from prison.

When justice to make return and file papers.

SEC. 234. On or before the first day of the term of the county court, next after the appeal shall have been allowed, the justice shall file in the office of the clerk of said court, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit and filed with the justice.

When and how justice may be compelled to make return.

SEC. 235. If a return shall not be made by a justice, according to law, either party may file with the clerk of the county court, an affidavit, stating that such appeal has been duly made, and that the justice has failed to make his return to such court according to law, whereupon the court may compel such return by order or attachment.

Also to amend same.

SEC. 236. Upon satisfactory evidence that the return of a justice is substantially erroneous or defective, the court may, in like manner, compel him to amend the same.

How court may punish disobedience of justice.

SEC. 237. Upon an attachment being issued against a justice, pursuant to either of the foregoing sections, the court may punish the disobedience of the justice by imprisonment until he submit, and may adjudge that he pay the costs of the proceedings against him; and such order shall be enforced as other orders of the court.

When court may determine case without jury.

SEC. 238. Upon the return of the justice being made and filed, if the appeal be not dismissed, and the nature and circumstances of the case, and of the questions presented by the return, are such as not to require a trial by jury, the county court shall have power to examine and determine the same, and to give such judgment, or make such order in the case, as law and justice between the parties shall require.

When appeal not to be dismissed because fees of justice not paid

SEC. 239. No appeal shall be dismissed, after a return has been made by the justice, on the ground that the costs of the justice have not been paid.

If appeal dismissed, judgment for appellee.

SEC 240. If an appeal be dismissed or discontinued, the court shall enter judgment in favor of the appellee for costs.

When to be discontinued.

SEC. 241. If an appeal be not prosecuted within such time as shall be prescribed by the court, the court shall order the same to be discontinued with costs.

How justice to proceed in case of dismissal or discontinuance

SEC. 242. Upon an appeal being dismissed or discontinued, and a certified copy of the order of dismissal or discontinuance being served upon the justice, he shall proceed as if no appeal had been made.

When appellee may prosecute recognizance on dismissal, &c.

SEC. 243. The appellee in whose favor a judgment shall have been rendered, shall not be entitled to prosecute the recognizance given on an appeal which shall have been dismissed or discontinued, until an execution on the judgment appealed from shall have been returned, that sufficient goods and chattels of such appellant cannot be found to satisfy the same.

Issue below to be the issue above, unless otherwise ordered.

SEC. 244. The issue before the justice shall be tried before the court above, without other or further new declaration or pleading, except in such cases as shall be otherwise directed by the court.

When and what costs shall be allowed appellant.

SEC. 245. Whenever costs are awarded to the appellant, he shall be allowed to tax, as part thereof, the costs and fees paid the justice on making the appeal, in addition to the costs in the county court; and where the judgment in the suit before the justice was against such appellant, he shall further be allowed to tax the costs incurred by him, which he would have been entitled to recover, in case the judgment below had been rendered in his favor.

When judgment may be entered against surety.

When execution to issue or surety discharged.

SEC. 246. In all cases where final judgment shall be rendered against the appellant in the county court, the same may, on motion of the appellee, be entered, as well against the surety on the appeal, as against the appellant, and execution may issue against them jointly; but in such case, the surety shall be discharged from such judgment, if no execution be issued thereon within thirty days after the rendition thereof, unless such surety consent to further delay.

When discharged, if execution not issued against appellant.

SEC. 247. If the judgment be rendered against the appellant alone, execution shall be issued thereon within thirty days after the rendition of the same, or the sureties in the recognizance shall be discharged.

County courts may adopt rules relative to appeals, and force of same.

SEC. 248. The several county courts may, from time to time, adopt such rules to regulate the practice in relation to appeals, in their respective courts, as they may deem expedient to carry the foregoing provisions into effect; and such rules may authorize the entry of judgment of non-suit or discontinuance against the appellant, when he shall not prosecute his appeal to effect, according to such rules and the practice of the court.

Of proceedings for Contempts before Justices of the Peace.

When may punish for contempt.

SEC. 249. In the following cases, and no others, a justice of the peace may punish for contempt:

1. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tends to interrupt such proceedings, or to impair the respect due to his authority :

2. Persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice :

3. Persons guilty of resistance or disobedience to any lawful order or process made or issued by him.

Punishment for contempts.

Sec. 250. Punishment for contempts may be by fine, not exceeding twenty dollars, or by imprisonment in the county jail, not exceeding two days, unless otherwise provided, at the discretion of the justice.

Right of offender to a hearing; justice may issue warrant.

Sec. 251. No person shall be punished for contempt before a justice of the peace, until an opportunity shall have been given him to be heard in his defence, and for that purpose the justice may issue his warrant to bring the offender before him.

If offender present, may be arraigned without warrant.

Sec. 252. If the offender be present, he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon.

Form of warrant.

Sec. 253. The warrant for contempt may be in the following form.

——— *County,* } *ss.*
Town of ——— }

To the sheriff or any constable of said county :

In the name of the State of Wisconsin, you are hereby commanded to apprehend A. B. and bring him before J. P., one of the justices of the peace of the said county, at his office in said town, to show cause why he, the said A. B. should not be covicted of a criminal contempt, alleged to have been committed on the —— day of ——— A. D. 18—, before the said justice, while engaged as a justice of the peace in judicial proceedings.

Dated at the town aforesaid, the —— day of ——, A. D. 18—.

J. P., *Justice.*

On conviction, justice to make and file record; to enter proceedings in his docket.

Sec. 254. Upon the conviction of any person for contempt, the justice shall make up a record of the proceedings on such conviction, stating the particular circumstances of the offence, and the judgment rendered thereon, and shall file the same in the office of the clerk of the circuit court, and shall also enter the same in his docket as in civil cases.

Warrant of commitment to set forth circumstances of offence.

Sec. 255. The warrant of commitment for any contempt, shall set forth the particular circumstances of the offence, or it shall be void.

Form of record of conviction.

Sec. 256. The record of conviction may be in the following form :

——— *County, ss.*

Whereas, on the —— day of ——— A. D. 18—, while the undersigned, one of the justices of the peace of the town of ——— in the said county, was engaged in the trial of a cause between C. D. plaintiff, and E. F. defendant, in said town, according to the statute in such case made and provided, A. B. of the town of ——— in said county, did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly;) and whereas the said A. B. was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas the said A. B. did not show any cause against the said charge: be it therefore remembered, that the said A. B. is adjudged to be guilty, and is convicted of the criminal contempt aforesaid before the undersigned, and is adjudged by the undersigned to pay a fine of ——— dollars, (or to be imprisoned in the common jail of said county, for the term of two days, or until he be discharged from imprisonment according to law.)

Dated this —— day of ———, 18—.

J. P., *Justice.*

When justice may commit witness.

SEC. 257. When any witness attending before a justice of the peace in any cause, shall refuse to be sworn in some form prescribed by law, or to answer any pertinent or proper question, such justice may by order commit such witness to the jail of the county.

What order to specify; how long witness to be confined.

SEC. 258. Such order shall specify the cause for which the same is issued; and if it be for refusing to answer any question, such question shall be specified therein; and such witness shall be closely confined pursuant to such order, until he submit to be sworn or to answer, as the case may be.

Justice to adjourn cause, &c.

SEC. 259. The justice shall thereupon adjourn such cause at the request of the party, for such time as shall be reasonable, or until such witness shall testify in the case.

When witness, and when party to pay the costs.

SEC. 260. If any person duly subpœnaed, and obliged to attend as a witness, shall fail so to do, he shall be considered guilty of a contempt, and shall be fined all the costs for his apprehension, unless he shall show reasonable cause to the satisfaction of the justice for his omission to attend, in which case, the party requiring such apprehension shall pay the costs thereof.

Miscellaneous Provisions.

Justices may issue subpœnas and administer oaths

SEC. 261. Any justice of the peace may issue subpœnas to compel the attendance of witnesses before any court held by a justice of the peace, and may administer all necessary oaths in proceedings before such court.

Liability of justice and his sureties for moneys collected by him, &c.

SEC. 262. Every justice of the peace and his sureties shall be liable on the instrument executed by such justice and his sureties, and filed in the office of the clerk of the circuit court, as prescribed by law, to each and every person for whom such justice shall collect money and refuse to pay the same; and it shall be competent for any person to whom such justice and his sureties may have become liable as aforesaid, to sue him and his sureties, in an action for money had and received; and on proof that said justice has neglected or refused to pay any sum of money by him collected as aforesaid, judgment shall be given against the parties defendants in such suit, for the money so collected, together with interest and costs, according to the conditions of such instrument.

Penalty on justice for acting before qualified.

SEC. 263. Any person elected, who shall act as a justice of the peace without having qualified according to law, knowing that he has not so qualified, shall, on conviction thereof by an indictment, be fined in a sum not exceeding five hundred dollars.

Conviction of justice of certain crimes on indictment to constitute removal from office.

SEC. 264. If any justice of the peace be convicted of bribery, perjury, or other infamous crime, by indictment, such conviction shall constitute a removal from office, and he shall be sentenced accordingly.

Process issued by justice to be signed by him, &c.

SEC. 265. All process issued by a justice of the peace shall be signed by him, and may be under seal or without seal.

No constable to receive anything as an inducement to neglect his duty.

SEC. 266. No constable shall ask or receive any money or valuable thing from a defendant or other person, as a consideration, reward or inducement for omitting to arrest any delinquent, or to carry him before any justice; or for delaying to take any party to prison; or for postponing the sale of any property under any execution; or for omitting or delaying the execution of any duty pertaining to his office.

No justice or constable to purchase demands for prosecution, or lend money to induce same.

SEC. 267. No justice of the peace or constable shall, directly or indirectly, buy or be interested in buying, any bond, note or other demand or cause of action, for the purpose of commencing any action or suit thereon before a justice; nor shall any justice or constable, either before or after suit brought, lend or advance, or agree to lend or advance, or procure to be lent or advanced, any money or valuable thing, to any person in consideration of, or as a reward for, or inducement to, the placing or having placed in the hands of such justice or constable, any debt, demand, or cause of action whatever, for prosecution or collection.

Justice not to purchase judgment rendered by him

SEC. 268. No justice of the peace shall purchase, directly or indirectly, or be interested in the purchase of any judgment rendered by him.

Penalty on justice and constable for violating three last sections.

SEC. 269. Every justice or constable, offending against either of the provisions of the three last preceding sections, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment, in the discretion of the court; and every such conviction shall operate as a forfeiture of the office of the justice or constable so convicted.

Justice to file and preserve all papers in each cause separately.

SEC. 270. Every justice shall carefully preserve and file all affidavits and papers delivered to him to be filed in any cause, separate from all other papers.

To keep index of judgments, and how.

SEC. 271. Every justice shall keep an alphabetical index of all judgments entered in his docket book in the course of any judicial proceedings had before him, in which shall be inserted the names of the parties to each judgment, and the page of his docket where such judgment is entered.

In case of sickness, justice may transfer cause to another justice for hearing, &c.

SEC. 272. If any justice of the peace shall be unable from sickness to attend to business when there shall be pending before him any matter or suit undetermined, he may deliver over all the papers relating to such matter or suit, with a minute of his proceedings therein, to some neighboring justice of the same town, who may thereupon proceed to hear, try and determine such matter or suit, in the same manner as if such matter or suit had been commenced before him, and with like effect; but the parties to such matter or suit, their agents or attorneys, shall be notified of such transfer, previous to any hearing or trial of such matter or suit.

Parties to be notified,

Justice, on expiration of his office, to deliver over books and papers.

SEC. 273. When the term of office of a justice shall expire, he shall forthwith deliver over to the nearest justice all the books and papers relating to his office as a justice of the peace.

When books and papers of justice to be delivered to town clerk.

SEC. 274. Whenever any justice shall be removed from office, or shall remove out of the town in which he was elected, or his office shall in any way become vacant, except by death, if his successor in office be not elected and qualified, such justice, or the person in whose possession the same may be, shall, within ten days after such vacancy shall happen, deliver to the town clerk all the books and papers in his custody relating to his office as a justice of the peace.

When town clerk may demand books and papers of justice, &c.

SEC. 275. In case any justice shall die, and any books or papers belonging to such justice, in his official capacity, shall come to the hands of any person, the town clerk may demand and receive such books and papers from the person having the same in his possession; and it shall be the duty of every such person, within ten days after any such books and papers shall come to his possession, whether demanded or not, to deliver the same to the town clerk.

When town clerk shall deliver over books and papers received to another justice, and give notice.

SEC. 276. Whenever any town clerk shall receive the books and papers of any justice of the peace, as herein before provided, he shall, within ten days from the time he received the same, deliver them over to some other justice of the same town and give notice thereof.

What notice to specify, and how posted

SEC. 277. Such notice shall specify the name of the justice whose books and papers shall have been so delivered, and to what justice, and when the same were delivered by such clerk, and shall be posted up in three of the most public places in such town.

How justice to proceed in cause undetermined, on transfer of books and papers to him

SEC. 278. Whenever the office of any justice shall become vacant, by resignation, removal, or otherwise, and there shall be pending before him any matter or suit undetermined, and the books and papers of such justice shall be delivered over to any other justice of the town, pursuant to the foregoing provisions, the justice to whom such books and papers shall be so delivered, shall proceed to hear, try and determine such matter or suit, and to issue execution thereon, in the same manner, and with the like effect, as he might have done if such matter or suit had been originally commenced before him.

Suits undetermined when office of justice becomes vacant, to be continued, and parties to be notified.

SEC. 279. All suits and proceedings pending before any justice of the peace, and undetermined when his office shall become vacant, shall be continued as of course until the expiration of ten days from the time when the books and papers of such justice are delivered over to another justice of the town, as herein before provided, of which time, the justice to whom such books and papers shall be delivered, shall cause at least three days notice to be given to the parties to such suit or proceeding, or such of them as shall be within the county.

Justice to whom books, &c. trans-

SEC. 280. The justice to whom the books and papers of another justice shall have been transferred, as hereinbefore provided, may ferred, may issue execution.

issue execution upon any judgment appearing upon the books so transferred, in the same manner, and with like effect, as if such judgment had been rendered by him.

When justice to make return to appeal after he has gone out of office.

SEC. 281. Whenever an appeal shall be duly made from a judgment rendered by a justice while in office, either before or after the justice shall have gone out of office, and before his books and papers shall have been delivered to the clerk of the town, or to his successor in office, it shall be the duty of such justice to make return to such appeal, in like manner as if he were in office at the time of making such return.

When justice to whom books, &c. are transferred to make return to appeal, &c.

SEC. 282. If a justice to whom an affidavit of appeal and recognizance shall have been duly delivered as hereinbefore provided, shall die, become insane, remove out of the state or abscond, so that the return of such justice to the appeal cannot be compelled, the justice to whom his books and papers shall have been transferred, shall make and file with the clerk of the county court, a transcript of the docket of the cause, together with all the papers relating thereto, and the county court shall proceed thereon in the same manner as if return had been made by the justice who rendered the judgment therein.

When and how appeal may be taken after transfer of books and papers.

SEC. 283. If, before the expiration of the time limited for appealing from any judgment rendered by a justice of the peace, the term of office of such justice shall expire, or his office otherwise become vacant, either party conceiving himself aggrieved by such judgment, may, within five days after the books and papers of such justice shall have been transferred to another justice pursuant to the foregoing provisions, deliver the affidavit of appeal and recognizance, to the justice having control of such judgment, and pay him the fee hereinbefore provided, and such justice shall within ten days thereafter, make return to such appeal in the same manner, and with the like effect, as if the judgment appealed from had been rendered by him.

Proceedings on appeal when a return cannot be compelled.

SEC. 284. If for any cause, a return to an appeal cannot be compelled, the court to which such appeal shall be made, may receive the affidavits of witnesses and of the parties, to the facts and circumstances of the proceedings, and of the judgment appealed from; and shall proceed thereon in the same manner as if such facts had been returned by the justice whose duty it was to make return to such appeal.

Court may compel return, when justice has removed from county before making same.

SEC. 285. If any justice whose duty it shall be to make return to any appeal, shall, before making such return according to law, remove out of the county into any other county in this state, the court to which such appeal shall be made, shall have power to compel a return to such appeal in the same manner as if such justice had not so removed.

When constable to collect execution after his term of office expires, &c.

SEC. 286. Every constable to whom any execution shall have been delivered, and whose term of office shall expire before the time within which the return or collection of such execution is required by law, shall proceed thereon in the same manner, and shall have the same powers in relation thereto, as if his term of office had not expired; and such constable and his sureties shall be liable for any neglect of duty, and for moneys collected upon such execution, in the same manner, and to the same extent as if the term of office of such constable had not expired.

When officer first to exhaust the personal estate of principal debtor, &c.

SEC. 287. Every officer having an execution in his hands for collection, upon an affidavit being served upon him, made by any co-defendant in such execution, his agent or attorney, showing the principal debtor therein, shall first exhaust all the personal estate of said principal debtor which may be turned out by any one of the defendants, before selling the property of any other defendant, who may be surety in the demand upon which judgment was rendered.

CHAPTER 89.

OF THE JURISDICTION OF JUSTICES IN CRIMINAL CASES, AND OF THE PROCEEDINGS THEREIN.

Powers and jurisdiction of justices in criminal cases.

SECTION 1. Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows:

1. To cause to be kept all laws made for the preservation of the peace:

2. To cause to come before them, or any of them, persons who shall break the peace, and commit them to jail or bail them, as the case may require:

3. To arrest and cause to come before them persons who attempt to break the peace, persons who keep houses of ill fame, or frequenters of the same, or common prostitutes, and compel them to give security for their good behavior, and to keep the peace:

4. To cause to come before them, persons who are charged with committing any criminal offence, and commit them to jail or bail them, as the case may require.

Justices empowered to hold court to try criminal offences.

SEC. 2. Justices of the peace shall have power to hold a court, subject to the provisions hereinafter contained, to hear, try and determine all charges for offences arising within their respective counties, where jurisdiction is conferred upon them by any law of this State.

Justice to examine complainant on oath, &c,

SEC. 3. Upon complaint made to any justice of the peace by any constable or other person, that any such offence has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the complainant; and if it shall appear that such offence has been committed, the said justice shall issue his warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed, forthwith to arrest the accused, and bring him before such justice, or some other justice of the same county, to be dealt with according to law; and in the same warrant, may require the officer to summon such witnesses as shall be named therein, to appear and give evidence at the trial.

When warrant to be issued and what to contain.

How suit to be entered in docket, &c.

SEC. 4. The justice shall enter a suit in his docket, in which the State of Wisconsin shall be plaintiff, and the accused, defendant;

and he shall keep all such other entries as are required in civil causes.

When justice to try cause.

Sec. 5. On the return of the warrant with the accused, the said justice shall proceed to hear, try and determine the cause within one day, unless continued for cause.

When accused may give bail; when may be committed, &c.

Sec. 6. From the time of the return of the warrant, until the time of the trial, the accused may give bail with one or more sufficient sureties for his appearance at the time fixed for the trial, or in the event of failure so to do, may be committed to jail for safe keeping, by order of said justice, or left in custody of the arresting officer.

Charge to be read to accused; plea, &c.

Sec. 7. The charge made against the accused, as stated in the warrant of arrest, shall be distinctly read to him, and he shall be required to plead thereto, which plea the court shall enter in their minutes; if the accused refuse to plead, the court shall enter the fact with a plea of not guilty, in behalf of such accused, in its minutes.

When court to try issue, &c.

Sec. 8. If the plea of the accused be not guilty, and no jury be demanded by him, the said court shall proceed to try such issue, and to determine the same according to the evidence which may be produced against and in behalf of such accused.

Court to render judgment on plea of guilty.

Sec. 9. If the accused shall plead guilty to such charge, the court shall thereupon convict him of the offence charged, and render judgment thereon.

Trial to be by jury, unless right expressly waived by accused; proceedings to obtain jury.

Sec. 10. After the joining of issue, and before the court shall proceed to an investigation of the merits of the cause, unless the accused shall expressly waive his right to a trial by jury, the court shall direct the sheriff or any constable of the county to make a list in writing, of the names of eighteen inhabitants of the county qualified to serve as jurors in the courts of record of this state, from which list the complainant and accused may each strike out six names.

When court may appoint person to strike out names; how venire issued.

Sec. 11. In case the complainant or the accused shall neglect to strike out such names, the court shall direct some suitable, disinterested person, to strike out the names for either or both the parties so neglecting; and upon such names being struck out, the justice shall issue a venire, directed to the sheriff or any constable of the county, requiring him to summon the six persons whose names shall remain upon such list, to appear before such court at the time and place to be named therein, to make a jury for the trial of such offence.

How officer to summon jurors, and return venire.

Sec. 12. The officer to whom such venire shall be delivered, shall summon such jurors personally, and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return the same with such venire to the court, within the time therein specified.

When and how talesmen may be summoned.

Sec. 13. If any of the jurors named in such venire, shall fail to attend in pursuance thereof, or if there shall be any legal objection to any that shall appear, the court shall supply the deficiency by directing the sheriff or any constable, who may be present and disinterested, to summon any of the bystanders or others who may be competent; and against whom no cause of challenge shall appear, to act as jurors in the cause.

When and how new jury may be selected and summoned.

Proceedings if accused consent to be tried by court.

SEC. 14. If the officer to whom the venire shall have been delivered, shall fail to return the same as thereby required, or if the jury shall fail to agree, and shall be discharged by the court, a new jury shall be selected and summoned in the same manner, and the same proceedings shall thereupon be had, as herein prescribed in respect to the first jury, unless the accused shall consent to be tried by the court, in which case the court shall proceed to the trial of the issue, as if no jury had been demanded.

How either party may challenge jurors

SEC. 15. In all trials for criminal offences before a justice of the peace, either party may challenge any juror for cause as in civil cases.

Oath of jurors.

SEC. 16. To each juror such justice shall administer the following oath or affirmation :

"You do solemnly swear (or 'You do solemnly and sincerely declare and affirm,' as the case may be,) that you will, well and truly, try this cause between the State of Wisconsin and ———, the accused, and a true verdict give, according to law and the evidence given you in court, unless discharged by the court."

How jury to hear proofs, &c; how kept until they agree or are discharegd, &c.

SEC. 17. After the jury shall have been sworn, they shall sit together and hear the proofs and allegations in the case, which shall be delivered in public, and in the presence of the accused ; and after hearing such proofs and allegations, the jury shall be kept together in some convenient place, until they agree on a verdict, or are discharged by the court, and a sheriff or constable shall be sworn to take charge of the jury, in like manner as upon trials in justices' courts in civil proceedings.

Verdict to be delivered publicly and entered.

SEC. 18. When the jurors have agreed on their verdict, they shall deliver the same to the court, publicly, who shall enter it in his docket.

When justice to render judgment; extent of punishment.

SEC. 19. Whenever the accused shall be tried under the preceding provisions of this chapter, and found guilty, either by the court or by the jury, or shall be convicted of the charge made against him upon a plea of guilty, the court shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require ; but such punishment shall in no case exceed the limit fixed by law for the offence charged.

When accused to be discharged; when complainant shall pay costs, &c.

SEC. 20. Whenever the accused, tried under the preceding provisions of this chapter, either by the court or by a jury, shall be acquitted, he shall be immediately discharged ; and if the court before whom the trial is had, shall certify in his docket, that the complaint was wilful and malicious, and without probable cause, it shall enter a judgment against the complainant to pay all the costs that shall have accrued to the court and sheriff or constable, and jury, in the proceedings had upon such complaint ; and unless he give satisfactory security by bond to this state, with one or more sureties, to pay the same in thirty days after the said trial, execution shall issue therefor.

Person convicted may appeal to circuit court, &c.

SEC. 21. The person charged with and convicted by any such justice of the peace, of any such offence, may appeal from the judgment of such justice of the peace to the circuit court ; provided said person shall within twenty-four hours enter into a recognizance with one or more sufficient sureties, conditioned to appear before said court and abide the judgment of the court therein.

And the justice from whose judgment an appeal is taken, shall make a special return of the proceedings had before said justice, and shall cause the warrant and return, together with the recognizance or recognizances, to be filed in said circuit court, on or before the first day of the circuit court next to be holden for said county; and the complainant and witnesses may also be required to enter into recognizances with or without sureties, in the discretion of the court, to appear at said circuit court at the time last aforesaid, and to abide the order of the court therein.

When and how justice to make return; may recognise complainant and witnesses to appear.

Sec. 22. If the complainant shall refuse or neglect to pay such costs, or to give such security, the court may forthwith enter judgment against him for the amount of such costs, and forthwith issue execution thereon, in the same manner, and with the like effect, as in case of an execution issued by a justice of the peace, on a judgment in an action for a trespass or other wrong; and such moneys, when collected, shall be paid over to such court.

When court may enter judgment and issue execution for costs against complainant, &c.

Sec. 23. The judgment of every such court shall be executed by the sheriff or any constable of the county where the conviction shall be had, by virtue of a warrant under the hand of the justice who held the court, to be directed to such officers, and specifying the particulars of such judgment.

Judgment of court to be executed by warrant, &c.

Sec. 24. In case any person summoned to appear before any court held by a justice of the peace, pursuant to the provisions of this chapter, as a juror or witness, shall fail to appear, or if any witness appearing shall refuse to be sworn or to testify, he shall be liable to the same penalties, and may be proceeded against in the same manner, as provided by law in respect to jurors and witnesses in justices' courts in civil proceedings.

Proceedings against jurors and witnesses failing to appear, &c, under provisions of this chapter.

Sec. 25. Whenever any conviction shall be had before a court held by a justice of the peace, the justice by whom such court shall have been held, shall make a certificate of such conviction under his hand, in which it shall be sufficient, briefly to state the offence charged, and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

Justice shall make certificate of conviction and what to contain.

Sec. 26. Within twenty days after such conviction, the said magistrate shall cause such certificate to be filed in the office of the clerk of the county in which the conviction shall have been had.

When and where to file same.

Sec. 27. Every certificate of conviction, made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence in all courts and places, of the facts therein contained.

Certificate or copy thereof to be evidence.

Miscellaneous Provisions in Criminal Cases.

Sec. 28. No assault, battery or affray, shall be indictable, but all such offences shall be prosecuted and determined in a summary manner, by complaint made before a justice of the peace, and on conviction thereof, the offender may be punished by fine not less than five dollars, nor more than fifty dollars, according to the nature of the offence.

Assault, battery, &c, not indictable; same to be tried before justice and amount of fine.

Sec. 29. If any justice of the peace shall have any knowledge that any of the offences mentioned in the last section, are about to be committed, he shall issue his warrant and proceed as is directed when complaint has been made; and if any such offence is com-

When justice to issue warrant on his own knowledge; when may arrest without warrant, and his powers in making same.

Penalty for refusing to aid in making arrest.

mitted, threatened or attempted in his presence, he shall immediately arrest the offender, or cause it to be done; and for this purpose, no warrant or process shall be necessary; but the justice may summons to his assistance any sheriff, coroner or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice, or any of his assistants in the performance of their duty; and any person who shall, when summoned to aid in arresting and securing an offender, refuse to give such assistance, shall pay five dollars to the use of the county.

When recognizances to be certified to circuit court.

Sec. 30. In case of the breach of any recognizance entered into in a criminal case, the same shall be certified and returned to the circuit court to be proceeded in according to law.

How justice to proceed when he has not jurisdiction of cause before him.

Sec. 31. If, in the progress of any trial before a justice of the peace, under the provisions of this chapter, it shall appear to the justice that he has not final jurisdiction in the case before him, and the accused ought to be put upon his trial for an offence cognizable before the circuit court, the justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases, cognizable before the circuit court.

Duty of justice to summon injured party and other witnesses to attend trial.

Sec. 32. In all cases arising under this chapter, it shall be the duty of the justice of the peace acting, to summon the injured party and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment, if necessary.

On conviction, justice to enter judgment for fine and costs, and may commit till paid, &c.

Sec. 33. In all cases of conviction uuder the provisions of this chapter, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county.

How judgment to be rendered on conviction in circuit court.

Sec. 34. If the judgment of the justice shall be affirmed, or upon any trial in the circuit court, the defendant shall be convicted and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his sureties.

When justice may verbally notify witnesses to attend trial, &c.

Sec. 35. When a trial under the provisions of this chapter shall be continued by the justice, it shall not be necessary for the justice to summon any witness who may be present at the continuance, but said justice shall verbally notify such witnesses, as either party may require, to attend before him to testify in the cause on the day set for trial, which verbal notice shall be as valid as a summons.

Justice may require security for costs of complainant.

Sec. 36. The justice may require of the complainant to give security for costs, as in civil cases security may be required of the plaintiff, and if he refuse, the justice may dismiss the complaint.

Fines paid before committal, to be paid to justice, and by him to county treasurers.

Sec. 37. All fines imposed by any such court, if paid before the accused is committed, shall be received by the magistrate who constituted the court before which the accused was convicted, and by such magistrate paid over to the county treasurer, within thirty days after the receipt thereof, to be distributed according to law.

If after committal, to sheriff, and by him to the treasurer.

Sec. 38. If the accused be committed, payment of any fine imposed on him, shall be made to the sheriff of the county, who shall, within thirty days after the receipt thereof, pay over the same to the county treasurer, for the purposes aforesaid.

If person receiving fine neglect to pay over same, district attorney to prosecute.

SEC. 39. If any person who shall have received any such fine, or any part thereof, shall neglect to pay over the same pursuant to the foregoing provisions, it shall be the duty of the district attorney immediately to commence suit therefor, and to prosecute the same diligently to effect.

Of Forms of Writs, &c., in Criminal Proceedings.

Forms that may be used under this chapter.

SEC. 40. The following forms may be used under this chapter:

Warrant.

——— *County,* } ss.
Town of ——— }

To the sheriff or any constable of said county:

Whereas, ——— ——— has this day complained in writing to me, on oath, that ——— ——— did, on the ——— day of ———, A. D. 18—, at the town of ———, in said county, [here insert the complaint, whatever it may be,] and prayed that the said ——— ——— might be arrested and dealt with according to law: Now, therefore, in the name of the state of Wisconsin, you are commanded forthwith to apprehend the said ——— ———, and to bring him before me, to be dealt with according to law.

Given under my hand, the ——— day of ———, A. D. 18—.

J. P., *Justice of the Peace.*

Certificate of Conviction.

——— *County,* } ss.
Town of ——— }

At a justice's court held at my office in said town, before me, ——— ———, a justice of the peace in and for said county, for the trial of ——— ——— for the offence hereinafter stated, the said ——— ———, of, &c., was convicted of having, on the ——— day of ———, A. D. 18—, at the town of ———, in said county, (here state the offence as in the warrant;) and upon such conviction, the said court did adjudge and determine, that the said ——— ——— should pay a fine of ——— dollars, (and if imprisonment be allowed, add) and be imprisoned in the common jail of the county ——— days; (if the fine be paid, add) and the said fine has been paid to me.

Given under my hand, the ——— day of ———, A. D. 18—.

J. P., *Justice of the Peace.*

Execution.

——— *County,* }
Town of ——— } ss.

To the sheriff or any constable of said county:

Whereas, at a justice's court held at my office in said town, for the trial of ——— ———, for the offence hereinafter stated, the said ——— ———, of, &c., was convicted of having, on the ——— day of ——— ———, A. D. 18—, at the town of ———, in said county, (here state the offence as in the warrant); and upon conviction, the said court did adjudge and determine, that the said ——— ——— should pay a fine of ——— dollars: And whereas said fine has not been paid by the said ——— ———, these are, therefore, in the name of the state of Wisconsin, to command you to levy distress on the goods and chattels, (&c., as in an execution against the goods or body in civil cases.)

Commitment upon Sentence.

——— *County,* }
Town of ——— } ss.

To any constable, and to the keeper of the common jail of said county:

Whereas at a justice's court held at my office in said town, for the trial of ——— ——— for the offence hereinafter stated, the said ——— ———, of, &c., was convicted of having, on the ——— day of ———, A. D. 18—, at the town of ———, in said county, (here state the offence as in the warrant;) and upon conviction, the said court did adjudge and determine, that the said ——— ——— should be imprisoned in the common jail of said county for ——— days: Therefore, you, the said constable, are commanded in the name of the state of Wisconsin, forthwith to convey and deliver the said ——— ——— to the said keeper; and you, the said keeper, are hereby commanded to receive the said ——— ——— into your custody in said jail, and him there safely keep, until the expiration of said ——— days, or until he shall be thence discharged by due course of law.

Given under my hand, this ——— day of ———, A. D. 18—.

J P., *Justice of the Peace.*

Commitment after Arrest and before Trial.

——— *County,* }
Town of ——— } ss.

To any constable, and to the keeper of the common jail of said county:

Whereas ——— ——— has been this day brought before the undersigned, one of the justices of the peace in and for said county, charged, on the oath of ——— ——— with having, on the ——— day of ———, A. D. 18—, at the town of ———, in said county, (here state the offence as in the warrant;) and the said ——— ——— not having given bail to appear and answer for the said offence; therefore you, the said constable, are commanded, in the name of the state of Wisconsin, forthwith to convey, and deliver into the custody of the said keeper, the body of the said ——— ———; and you, the said keeper, are hereby commanded to receive the said ——— into your custody in said jail, and him there safely to keep, until he shall be required to be brought before the court to be tried, or shall be otherwise discharged by due course of law.

Given under my hand, this —— day of ——— A. D. 18—.

J. P., *Justice of the Peace.*

Order to bring up Prisoner.

——— *County,* }
Town of ——— } ss.

To the keeper of the common jail of said county:

The undersigned, one of the justices of the peace in and for said county, sitting as a court for the trial of ——— ———, now in your custody in the common jail of said county, in the name of the state of Wisconsin, do hereby order and direct you to bring the said ——— ——— forthwith before me, at my office in said town, together with the warrant by which he was committed to your custody, in order that he may be tried.

Given under my hand, this —— day of ———, A. D. 18—.

J. P., *Justice of the Peace.*

Commitment, where Justice on the Trial shall find, that he has not Jurisdiction of the Case.

——— *County,* }
Town of ——— } ss.

To any constable of said county:

Whereas ——— ——— of, &c., has been brought this day before the undersigned, one of the justices of the peace of said county, charged on the oath of ——— ——— with having, on the ——— day of ———, A. D. 18—, at the town of ———, in said county, committed the offence of ———; here state the offence charged in the warrant;) and in the progress of the trial on said charge, it appearing to the said justice, that the said ——— ——— had been guilty of the offence of ———, (here state the new offence found on the trial;) committed at the time and place aforesaid, of which offence, the said justice has not final jurisdiction: And whereas, after examination had in due form of law, touching the said charge and offence last aforesaid, the said justice did adjudge that the said offence had been committed, and that there was probable cause to believe the said ——— ——— to be guilty thereof; and whereas the said ——— ——— has not offered sufficient bail for his appearance to answer for said offence, you are therefore commanded, forthwith to take the said ——— ———, and him convey to the common jail of said county, the keeper whereof is hereby required to detain him in custody in said jail, until he shall be thence discharged according to law.

Given under my hand, this —— day of ———, A. D. 18—.

J. P., *Justice of the Peace.*

TITLE XXIII.

OF PROCEEDINGS IN PERSONAL ACTIONS.

CHAPTER 90. Of process, of the commencement of suits, and the service and return of writs.
91. Of bail in civil actions, and proceedings connected therewith.
92. Of filing security for costs.
93. Of tender, of pleadings, and of proceedings on bills of exchange and promissory notes.
94. Of set-offs.
95. Of change of venue, and of referring and consolidating causes.
96. Of the survival of actions, and of death, marriage, or other disability occurring after the commencement of the suit.
97. Of grand and petit jurors.
98. Of evidence.
99. Of administering oaths.
100. Of amendments and proceedings thereupon.
101. Of default, and of the assessment of damages.
102. Of judgments and executions, of the exemption of property therefrom and the sale thereon, and of the redemption of lands, &c.
103. Of suits and proceedings by and against executors and administrators, and against the next of kin, heirs, legatees and devisees in certain cases.
104. Of writs of error and proceedings thereon, and of bills of exception.
105. Miscellaneous provisions.

CHAPTER 90.

OF PROCESS, OF THE COMMENCEMENT OF SUITS, AND THE SERVICE AND RETURN OF WRITS.

SECTION 1. The style of all writs and process from courts of record in this state, shall be "The State of Wisconsin," and such process shall be tested in the name of the chief justice, or presiding judge, or one of the judges of the court from which the same shall issue, be sealed with the seal of the court and dated the day it issued, and made returnable on the first day of the next succeeding term, and subscribed or indorsed with the name of the attorney, solicitor or other officer by whom the same shall be issued.

Style of writs, and issuing and return of same.

SEC. 2. All process issuing out of any court of record in this state, shall be sealed with the seal of the court from which it issues, and the clerks of the several courts of record in this state, are hereby authorized to issue and deliver to any attorney of their respective courts, blank process and seals to be used in sealing pro-

Writs to be sealed; clerks may issue blank process and seals to attorneys.

CHAPTER 90.

cess, under such rules as may be prescribed by the supreme, circuit or county courts

Where defendants to be sued.

Sec. 3. No person shall be sued in the circuit or county courts in any other county than the one in which he resides, or in which he may be found; Provided, that nothing herein contained shall prohibit the issuing an alias, if the defendant upon a capias or summons cannot be found within the county in which he is a resident.

Ib.

Sec. 4. When there are two or more defendants, the action, so far as it depends on the place of their residence, may be brought in the county where either of them lives.

Where suits may be brought against counties and county treasurers.

Sec. 5. When it shall be necessary to commence a suit, or any judicial proceedings, against any county or any county treasurer to recover its amount of indebtedness to the state, either for state taxes not paid over, or for any other cause, such suit or legal proceedings may be commenced in any county in this state.

Successors of public officers may prosecute bonds, &c, executed to their predecesors.

Sec. 6. When a bond, note or other security or contract is made to or with the treasurer of the state, or of any county, city, town, parish, or other corporation, or to, or with any other public officer, an action thereon may be commenced and prosecuted by any successor in such office, in like manner as it might have been by the person with whom the contract was made.

Indians may sue and be sued.

Sec. 7. All indians shall be capable of suing and being sued, in any of the courts of this state, in like manner and with the same effect, as other inhabitants thereof, and they shall be entitled to the same judicial rights and privileges

How actions commenced.

Sec. 8. Actions brought for the recovery of any debt, or for damages only, may be commenced either,

1. By original writ: or

2. By filing in the office of one of the clerks of the court, a declaration, entering a rule in the minutes kept by such clerk, requiring the defendants to plead to such declaration within twenty days after a service of a copy thereof, and notice of such rule, and serving a copy of such declaration and notice of such rule personally on the defendants.

Proceedings on service of declaration.

Sec. 9. Upon due proof of the service of a copy of a declaration and notice of rule to plead personally on the defendant, his appearance shall be entered in the same manner as if process had been duly served and returned; and his default may be entered for not pleading, and the same proceedings may be had against such defendant, in all respects, as if he had appeared.

Duties of sheriff in serving declaration.

Sec. 10. When a copy of a declaration and notice of rule to plead shall be delivered to any sheriff to serve, it shall be the duty of such sheriff to serve the same, with all convenient speed, and to return the same with his certificate indorsed thereon, of the time and manner of such service, either to the office of the clerk of the court in which such suit may be pending, or to the attorney whose name shall be indorsed on the declaration.

Effect of sheriff's certificate of service, &c.

Sec. 11. Such certificate of service, signed by the sheriff or his deputy, shall be as effectual to authorize the entry of the defendant's default for not pleading, as if the same had been sworn to by such officer; and the return of any declaration delivered to the sheriff, may be enforced by rule and attachment, in the same manner as the return of a capias or summons.

Writs of summons, how served.

SEC. 12. Writs of summons shall be served by showing the original writ to the defendant, and delivering to him a copy thereof; and on the return of the writ personally served, the defendant shall be considered in court, and may be proceeded against accordingly.

Service how made on defendants out of state, and on non-residents.

SEC. 13. If the defendant is out of the state at the time of the service of the process the service thereof shall be made by leaving it at his last and usual place of abode, if there be any within the state; and if the defendant never was an inhabitant of the state, the process shall be served by leaving the original or a copy, as the case may be, with his tenant, agent or attorney; and if there shall be no such tenant, agent or attorney within the state, known to the officer or the plaintiffs, the officer shall certify the facts in his return, and the court may thereupon cause notice to the defendant to be given in such manner as they shall think proper.

Capias, how served.

SEC. 14. Writs of capias ad respondendum shall be served by the sheriff, or other officer, by arresting the body of the defendant, and keeping him in his custody until discharged according to law.

When and how issued.

SEC. 15. No personal action shall be commenced by capias ad respondendum except in actions ex delicto, when the plaintiff or some one in his behalf, shall make and attach to such writ an affidavit, stating therein that the plaintiff has a claim for damages against the defendant for the cause of action stated in the writ, and upon which he believes that the plaintiff is entitled to recover a certain sum, being more than one hundred dollars.

Ib.

SEC. 16. Personal actions may be commenced by capias ad respondendum, in cases of claims, for damages other than those arising upon contract, either expressed or implied, when an order for bail shall be indorsed on the writ by a judge of any court of record.

Fictitious name, when may be used.

SEC. 17. When the name of any defendant is not known to the plaintiff, a suit may be commenced against him by a fictitious name, and it shall not be abated for that cause, but may be amended on such terms as the court shall think reasonable.

When action maintained against person out of state.

SEC. 18. No personal action shall be maintained against any person who is out of the state at the time of the service of the process, unless he shall have been before that time an inhabitant of the state, or unless an effectual attachment of his goods, estate or effects be made, except in cases in which it is otherwise specially provided.

Process against counties &c., and persons owning lands, &c, in common, how served.

SEC. 19. In all suits against the inhabitants of a county, the summons or declaration shall be served by leaving an attested copy thereof with one of the supervisors, or with the clerk of the board of supervisors; and in all suits against the inhabitants of a town, precinct, parish, religious society, or school district, or against the proprietors of common and undivided lands, or general fields, or wharves lying in common, the summons or declaration shall be served by leaving an attested copy thereof with the clerk of the corporation or proprietors, and also leaving any like copy with one of the officers of the town, or one of the assessors or standing committee of the parish, or religious society, or one of the proprietors of such land or other estate, as the case may be; and if there is no such clerk found within the county, a copy of the process so intended for him, shall be left with one of the other officers before mentioned, or with one of the said proprietors; and if there are no such officers, the copy of the process so intended for them respectively, shall be left with one of the inhabitants, or members of the corporation.

Against corporations, how served.

SEC. 20. In all suits against any corporation other than those mentioned in the preceding section, the process shall be served by leaving the original or copy, as the case may be, with the clerk, cashier, secretary, agent or any other officer having charge of their business, and if there be no such officer found within the county, the process may be served on any member of the corporation.

Defective service of writ, how remedied.

SEC. 21. When the service of the writ in any civil action is defective or insufficient, by reason of any mistake on the part of the plaintiff or of the officer, as to the place where, or the person with whom the process or the copy thereof ought to have been left, the court may, in their discretion, order a new process or notice to be issued and served, in such manner as they shall direct; and the service so made and returned, shall be as effectual as if duly made and returned on the original process.

Return of sheriff when defendant committed to prison.

SEC. 22. If a defendant arrested on process on which he is required to be held to bail, shall be committed to prison for want of such bail, the sheriff or other officer making the arrest, shall specially return upon such process the fact that the defendant is imprisoned for want of bail.

In such case when plaintiff to declare, &c.

SEC. 23. Upon such return being made, the plaintiff shall declare against the defendant on the first day of the term at which such process was returnable, and shall deliver a copy of the said declaration to such prisoner, or to the sheriff or keeper of the jail in whose custody such prisoner shall be; and if such declaration be not served as herein prescribed, the defendant shall be discharged from his imprisonment, and shall be entitled to judgment of discontinuance against the plaintiff.

Return of sheriff to wrong officer, not to excuse for neglect.

SEC. 24. No return of any process made to any other officer than required in this chapter, shall excuse any sheriff or other officer, from the liabilities, fines or proceedings prescribed by law, or by the rules and practice of the supreme court, for a neglect to make a return according to law.

Transportation companies to make and file statement.

SEC. 25. It shall be the duty of every association or company formed for the purpose of the transportation of passengers or property, either by boats, vessels or stages, to make a statement of the names of the persons composing such associations or company, and to file in the clerk's office of each county through which such association or company may transact its business, a copy of such statement.

Until filed, suit not to abate for nonjoinder

SEC. 26. Until such statement shall be so filed, any action to be brought against such association or company shall not be abated, by reason that all the members of the association are not joined in the action.

When suit not abated after statement filed.

SEC. 27. After such statement shall be made and filed as above provided, any action brought against the persons named in such statement shall not be abated, for the reason that other owners may have become interested, unless thirty days previous to the bringing of such action, a further statement shall be filed, as provided in the second preceding section, showing any change in the several persons composing such association, and the time when such change took place; nor shall any action become abated or defeated, by reason that any of said persons have ceased to be interested therein, unless at least thirty days before such action is brought, a notice thereof shall be filed as aforesaid.

Suits by and against Infants

Infants may sue.

Sec. 28. When an infant shall have any right of action to recover real property, or the possession thereof, or to recover any debt or damages, he shall be entitled to maintain a suit thereon; and the same shall not be deferred or delayed on account of such infant not being of full age.

Next friend to be appointed.

Sec. 29. Before any process shall be issued in the name of an infant who is sole plaintiff, in any suit, a competent and responsible person shall be appointed to appear as next friend for such infant in such suit, who shall be responsible for the costs thereof.

Appointment, how made.

Sec. 30. Such appointment shall be made as follows:

1. If the suit is intended to be brought in chancery, by the judge:
2. If intended to be brought in the supreme, circuit or county court, by a judge thereof:
3. If intended to be brought in any other court, by a judge of such court.

Ib.

Sec. 31. It shall be made on petition of the infant and the written consent of the person proposed to be next friend to such infant, duly acknowledged before, or proved to, the officer making the appointment.

When next friend to give bond to infant.

Sec. 32. Before any person shall be appointed next friend for an infant in any suit to recover any debt or damages, he shall, if required by the officer to whom application for such appointment shall be made, execute a bond to such infant in a penalty at least double the amount claimed in such suit, with such sureties as shall be approved by such officer, conditioned that such next friend shall duly account to such infant for all moneys which may be recovered in such suit.

Bond, where filed.

Sec. 33. Such bond shall be delivered to such officer before the appointment shall be made, and shall be by him filed in the office of the clerk of the court of the county in which such infant resides.

Order, when and where filed.

Sec. 34. The order for the appointment of a next friend shall be filed in the office of a clerk of the court, before any bill or declaration shall be filed in such cause.

When guardian appointed.

Sec. 35. After the issuing and service of process against any infant defendant, the suit shall not be any further prosecuted until a guardian for such infant be appointed.

Appointment, how made, and when and where filed.

Sec. 36. Such appointment shall be made upon the request of such defendant, and on the written consent of any competent person proposed as guardian, by any judge of the court, and shall be filed in the office of the clerk of the court before any plea by such infant shall be filed.

When plaintiff may procure order for appointment of guardian.

SEC. 37. If such infant defendant neglect for twenty days after return day of the process by which the suit was commenced, to procure the appointment of a guardian to defend the suit, the plaintiff may obtain an order from the judge of the court, requiring such infant to procure the appointment of a guardian, within ten days after the service of such order.

When may have guardian appointed.

SEC. 38. If a guardian be not appointed within the time specified in such order, the judge granting the same shall appoint some discreet person to be guardian for such infant in the defence of such suit.

When guardian not liable for costs.

SEC. 39. No person appointed guardian for the purpose of defending a suit against an infant, shall be liable for the costs of such suit, unless specially charged by the order of the court, for some personal misconduct in such cause.

CHAPTER 91.

OF BAIL IN CIVIL ACTIONS, AND PROCEEDINGS CONNECTED THEREWITH.

Proceedings to hold defendant to bail in action of tort.

SECTION 1. In all actions of tort, if the plaintiff, his agent or attorney, shall make an affidavit before some judge of a court of record of this state, that he hath good cause of action against the defendant, stating the particulars thereof, and the amount of damages he claims, such judge shall make an order, that the defendant be held to bail in such sum as the justice of the case may require, which order shall be indorsed on the process, and signed by such officer.

True cause of action to be expressed in capias.

SEC. 2. No person shall be held to bail on a capias ad respondendum, unless the true cause of the action be particularly expressed therein.

How writ requiring defendant to be held to bail to be executed.

SEC. 3. The sheriff, or other officer to whom any writ shall be delivered, requiring the defendant to be held to bail as herein provided, shall execute the same, by arresting the body of the defendant, and keeping him in his custody until discharged, according to law.

When sheriff to accept bail bond; when liable for insufficiency of bail.

SEC. 4. No officer shall be required to accept a bail bond, unless it be with two sureties at least, having sufficient property within this state; and if he take a bail bond with only one surety, he shall be liable to the plaintiff for any loss sustained by the insufficiency of the bail, although the surety may have been actually sufficient when taken.

Effect of bail bond.

SEC. 5. A bail bond shall bind the persons who execute it, though it be taken with one surety only, or with two or more sureties, when they, or either of them, may not have sufficient property within the state, as is required in the preceding section.

Bail to be by bond to officer, and condition of same.

SEC. 6. When bail is taken in any action, it shall be taken by a bond to the officer serving the process, with the addition of his name of office, conditioned that the defendant shall appear and answer to the plaintiff in the suit, and that he shall abide the final judgment of the court thereon, and shall not avoid.

Officer not obliged to receive bond, unless, &c.

SEC. 7. The officer shall not be obliged to receive such bond, unless either,

1. Such sureties shall be approved of by the plaintiff, his agent or attorney, which shall be indorsed on such bond, and signed by the person approving the same; or,

2. Such sureties shall each make an affidavit before such officer, (who is hereby authorized to administer the oath,) that he is worth the amount stated in the bond, over and above all debts; which affidavit shall also be signed by the sureties, indorsed on the bond, and certified to by the officer.

When officer liable to plaintiff for loss.

SEC. 8. Should the officer take a bond without such approval, or such affidavit, he shall be liable to the plaintiff for any loss sustained by the insufficiency of the bail.

Officer to give sureties bail piece.

SEC. 9. The officer shall give to each of the sureties a bail piece, in substance as follows:

Form of same.

STATE OF WISCONSIN, } ss.
——————— *County*, }

On this ——— day of ————————, A. D. 18—, C. D. is bailed by E. F. and G. H., of the county of ————————, a bail bond having been given, as by law directed, upon a capias ad respondendum, returnable to the ——— court for the county of ————, to be holden at ———— ———, on the ———— day of ———————— next, at the suit of A. B., in an action of ——— ————————; on which capias is an order requiring the defendant to be held to bail in the sum of ———————— dollars.

I. J., *Sheriff.*

Bond to be returned and filed, &c.

SEC. 10. The bail bond shall be returned and filed with the writ, and the clerk shall note on the writ that a bond is so filed, and in case of an appeal, the bond shall be sent with the other papers to the court appealed to.

When bail to satisfy judgment.

SEC. 11. In case of the avoidance of the principal, and the return of the execution, that he is not found, his bail shall be obliged to satisfy the judgment, with interest thereon, from the time when it was rendered, unless he shall discharge himself by surrendering the principal before final judgment against him on the writ of scire facias, or by other sufficient defence in that suit.

How far bail bond to be considered as a recognizance; scire facias on same.

SEC. 12. The bail bond shall be considered so far a matter of record, and of the nature of a recognizance, that the creditor may take out a writ of scire facias thereon in his own name, against the bail, in which it shall be sufficient to allege, substantially, that the defendants became bail, without setting forth the bail bond.

From what court, and when, scire facias may issue.

SEC. 13. The scire facias shall be issued from the court in which judgment against the principal is rendered, and may be taken out of the clerk's office in vacation as well as in term time.

Time allowed to serve scire facias.

SEC. 14. No such action shall be maintained against any person as bail, unless the writ of scire facias be served on him within one year after the rendition of final judgment against the principal.

Plea and defence allowed in such action.

SEC. 15. The defendants in such action may, either jointly or severally, plead that they never became bail, as alleged in the writ, and shall thereupon be entitled to every ground of defence of which they could have availed themselves, upon a plea that the bond is not their deed, if an action of debt had been brought on the bond; or they may plead specially any sufficient matter in their discharge.

When bail may surrender principal, &c.

SEC. 16. The bail may surrender the principal to the jailer of the proper county, who shall receive the prisoner, and hold him in custody, in like manner as if he had been committed by the officer who arrested him on the original writ, at any time before final judgment therein against them, and on paying the costs of suit on the scire facias up to that time, they shall be discharged.

May arrest principal on bail piece, &c.

SEC. 17. The surety may at any time, any where in this state, arrest his principal by authority of his bail piece, without further process, and may carry him to the jailer of the proper county, and may authorize any one to assist him in the same.

To notify plaintiff.

SEC. 18. He shall, within fourteen days, give notice in writing to the plaintiff in the suit, or to his attorney, of the time when and the place where the prisoner was so committed.

Person surrendered may be again bailed, &c.

SEC. 19. Every person who is surrendered by his bail and committed to prison, may be forthwith bailed, whether notice of the surrender shall or shall not have been given to the plaintiff, and shall in all respects have the same rights and privileges as if he had been committed upon the original arrest.

When sheriff to return on process that defendant is imprisoned.

SEC. 20. If a defendant arrested on process, in which he is required to be held to bail, shall be committed to prison for the want of such bail, the sheriff shall specially return upon such process, the fact that the defendant is so imprisoned for want of bail.

Time in which plaintiff shall declare, or defendant be entitled to judgment.

SEC. 21. The plaintiff shall declare against such defendant, on or before the first day of the term at which such process was returnable, and shall deliver a copy of the said declaration to such prisoner or to the sheriff or keeper of the jail, in whose custody such prisoner shall be; if such declaration be not served as herein prescribed, the defendant shall be discharged from his imprisonment, and shall be entitled to judgment of discontinuance against the plaintiff.

When plaintiff may sue out scire facias on bail bond.

SEC. 22. The plaintiff in the action shall not be entitled to sue out any scire facias on the bail bond, until

1. An execution against the property of the defendant shall have issued to the sheriff of the county, in which such defendant was originally arrested, and the same shall have been returned by such sheriff unsatisfied in whole or in part; and,

2. An execution against the body of the defendant, having at least fifteen days between the test and return day thereof, shall have been issued to the same sheriff, and by him returned, that the defendant could not be found within his county.

CHAPTER 92.

OF FILING SECURITY FOR COSTS.

Court may require security for costs.

SECTION 1. The court in which any civil action shall be pending, may, in all cases where it shall appear reasonable and proper, require the plaintiff to give sufficient security for all such costs as may be awarded against him therein.

When defendant may require security for costs.

SEC. 2. When a suit shall be commenced in any court,

1. For a plaintiff not residing within the jurisdiction of such court, or for several plaintiffs who are all non-residents; or,

2. For or in the name of the trustees or assignees of any debtor; or,

3. For or in the name of any person committed in execution for crime; or,

4. In the name of any infant whose next friend has not given security for costs,

The defendant may require such plaintiff to file security for the payment of the costs that may be incurred by the defendant in such suit or proceeding.

Ib.

SEC. 3. If, after the commencement of a suit, the plaintiff shall become a non-resident, or all the plaintiffs shall become non-residents, or be sentenced to state prison for any term less than for life, the defendant may also require such security to be filed.

Order to file security for costs, &c.

SEC. 4. The order shall be to file such security, and that all proceedings on the part of the plaintiff, be stayed until such security be filed, as hereinafter provided, and may be made by any judge or court commissioner, upon due proof by affidavit of the facts entitling such defendant thereto.

Form of security for costs, &c.

SEC. 5. Such security shall be given in the form of a bond, in a penalty of at least two hundred and fifty dollars, with one or more sufficient sureties, who shall swear that they are each worth the amount stated in the bond, over and above all debts, to the defendant, conditioned to pay on demand all costs that may be awarded to the defendant in such suit.

When filed and notice given.

SEC. 6. It shall be filed with the clerk of the court, and notice thereof be given to the defendant or his attorney, within twenty days after notice of the order to stay proceedings.

When new security may be required.

SEC. 7. If any security in any cause shall remove out of the state, or be deemed by the court insufficient, such court may require the plaintiff to give new security to the satisfaction of the court, for the payment of all such costs as may be awarded against him in the suit; and every person becoming such surety, shall be liable for all costs from the commencement of the suit, in like manner as if he had been the original obligor.

When attorney liable for costs.

SEC. 8. In the cases in which, according to the provisions of this chapter, a defendant at the commencement of a suit shall be entitled to require security for costs, the attorney for the plaintiff shall be liable for such costs to an amount not exceeding one hundred dollars, until security therefor be filed as herein provided, whether such security shall have been required by the defendant or not.

How may relieve himself.

SEC. 9. Such attorney may relieve himself from such liability, by filing security as herein provided, without being required to do so by the defendant, and by giving notice thereof to such defendant or his attorney.

CHAPTER 93.

OF TENDER, OF PLEADINGS, AND OF PROCEEDINGS ON BILLS OF EXCHANGE AND PROMISSORY NOTES.

Of Tender.

Tender, when may be pleaded.

SECTION 1. The payment or tender of payment of the whole sum due on any contract for the payment of money, although made after the money has become due and payable, may be pleaded to an action subsequently brought, in like manner and with the like effect as if such tender or payment had been made at the time prescribed in the contract.

Construction of provisions relative to tender.

SEC. 2. Nothing herein contained shall prevent any person from bringing any action for the breach of any covenant or other contract, instead of suing for the penalty by which the performance of the covenant or contract may have been secured.

When may be made after suit brought

SEC. 3. A tender may also be made after an action is brought on such contract of the whole sum due thereon, with the legal costs of suit incurred up to the time, provided it be made four days, at least, before the return day of the original process.

How made, and payment into court.

SEC. 4. The tender last mentioned may be made either to the plaintiff or to his attorney in the suit, and if not accepted, the defendant may plead in like manner as if it had been made before the commencement of the action, bringing into court the amount so tendered for costs, as well as for debt or damages.

Plaintiff to give certificate; notice to officer, &c.

SEC. 5. If such tender is accepted, the plaintiff or his attorney shall, at the request of the defendant, sign a certificate or notice thereof, to the officer who has the process, and shall deliver it to the defendant; and if any further costs shall be incurred for any service made by the officer after the tender, and before he receives notice thereof, the defendant shall pay the same to the officer, or the tender shall be invalid.

Of Pleadings.

Special pleas and demurrers allowed.

SEC. 6. Special pleas or special demurrers shall be allowed in any court in this state. Whenever a defendant shall plead the general issue in an action in which such issue may be pleaded, or whenever he shall plead nul tiel record to an action of debt on judgment; or whenever, in an action of covenant, he shall, by his plea, deny the execution of the instrument on which the plaintiff may have declared, he may give notice with such plea of any

May give notice with general issue.

matters which, if heretofore pleaded, would be a bar to such action, and may give such matter in evidence on the trial.

When plaintiff to declare.

SEC. 7. When a defendant shall have appeared in any cause, by causing his appearance to be entered or by putting in and perfecting bail, where bail is required, the plaintiff shall declare against such defendant by the end of the next term after the return of the writ, by which such suit was commenced.

When judgment of discontinuance may be entered.

SEC. 8. If a plaintiff fail to declare as in the last preceding section prescribed, judgment of discontinuance may be entered against him, according to the course and practice of the courts.

Of Proceedings on Bills of Exchange and Promissory Notes.

All or any of the parties on a bill or note may be jointly sued.

SEC. 9. It shall be lawful for the holder of any bill of exchange or promissory note hereafter to be made, instead of bringing separate suits against the drawers, makers, indorsers and acceptors of such bill or note, to include all or any of the said parties to the bill or note in one action, and to proceed by judgment and execution in the same manner as though all the defendants were joint contractors.

Plaintiff may declare on money counts alone, and bill or note may be given in evidence under same.

SEC. 10. The plaintiff in any such action, and in all other actions on bills of exchange or promissory notes, may declare upon the money counts alone; and any such bill or note may be given in evidence under the money counts in all cases where a copy of the bill or note shall have been served with the declaration.

How judgment may be rendered for or against plaintiff in such action.

SEC. 11. In any such action judgment may be rendered for the plaintiff against some one or more of the defendants, and also in favor of some one or more of the defendants against the plaintiff, according as the rights and liabilities of the respective parties shall appear, either upon confession, default, by pleading, or on trial; and when judgment shall be rendered in favor of any defendant, he shall recover costs against the plaintiff, in the same manner as though judgment had been rendered for all the defendants.

Defendants entitled to set-off.

SEC. 12. In any such action, any person or persons sued, shall be entitled to set-off his or their demands against the plaintiff, in the same manner as though such defendant or defendants had been sued in the form heretofore used.

Verdict in such case, how rendered.

SEC. 13. If upon the trial of any such action, the whole amount of the demands set off by any or all of the defendants, and allowed by the jury or the referees, shall be equal to, or shall exceed the amount of the plaintiff's demand as proved on the trial, the jury or referees shall find a verdict or make a report in favor of the defendants generally; but if the jury or referees shall allow any demand as a set-off, and shall still find or report a balance in favor of the plaintiff, they shall state in their verdict, or state in their report, the amount which they allow to each defendant as a set-off against the plaintiff's demand.

Rights, &c., of parties, to remain as now.

SEC. 14. The rights and responsibilities of the several parties to any such bill or note, as between each other, shall remain the same as they now are by law; saving only the rights of the plaintiff, so far as they shall be determined by the judgment.

Separate actions may be brought on bill or note.

SEC. 15. Nothing in this chapter shall be construed to prevent the holder of any bill or note from bringing separate actions against the parties to any such bill or note, in the manner now authorized by law.

When joint drawer, indorser, &c, may plead non-joinder in abatement.

SEC. 16. In any action brought upon a bill of exchange or promissory note pursuant to the provisions of this chapter, any joint drawer, maker, indorser or acceptor, may plead in abatement the non-joinder of any other joint drawer, maker, indorser or acceptor, in the same manner as if such action had been brought in the form heretofore used.

Where all of defendants not served with process, how judgment to be rendered in certain cases.

SEC. 17. No judgment shall be rendered, or record made up against any several drawer, maker, indorser or acceptor, not served with process, or with a copy of the declaration, when the suit is commenced by declaration, but judgment may be obtained against joint contractors, some of whom only have been served with process, or with a copy of the declaration, when the suit is commenced by declaration, and such judgment shall have the same effect against the joint contractors, as if the action had been brought in the form heretofore used.

When judgment need not be entered against all the defendants; when action severed.

SEC. 18. It shall not be necessary for the plaintiff to include in the same record, a judgment against all the parties to such bill or note, but judgment may be entered against any of the parties thereto, whenever the plaintiff would be entitled to the same if the suit had been commenced against such parties only, and if the trial or hearing of such cause be put off by any of the parties to such bill or note, or if a default shall have been obtained against part of the defendants, the plaintiff may proceed to the hearing or trial against the other parties, in the same manner as if the suit had been commenced against the other parties only, and the action shall thereby be severed.

When plaintiff entitled to testimony of any defendant.

SEC. 19. In every suit brought upon a bill or note, pursuant to the provisions of this chapter, the plaintiff shall be entitled to the testimony of any defendant as a witness, in cases where the plaintiff would have been entitled to his testimony against the other parties to such bill or note, had the suit been brought in the form heretofore used.

When defendant entitled to testimony of co-defendant.

SEC. 20. In every suit brought in pursuance of this chapter, any one or more of the defendants shall be entitled to the testimony of any co-defendant as a witness, in all cases where the defendant or defendants calling the witness would have been entitled to his testimony, had the suit been brought in the form heretofore used, and in no other case.

When one defendant may move for judgment as in case of non-suit.

SEC. 21. One or more of the defendants in any suit brought upon a bill or note pursuant to this chapter, may move for judgment as in case of non-suit, although the other defendants shall not unite in the motion; but one of several joint makers, drawers, indorsers or acceptors, shall not make such motion, unless the other joint contractors with him shall unite in the motion.

CHAPTER 94.

OF SET-OFFS.

In what cases, and under what circumstances set-offs allowed.

SECTION 1. In the following cases, and under the following circumstances, a defendant may set off demands which he has against the plaintiff:

1. It must be a demand arising upon judgment or upon contract, express or implied, whether such contract be written or unwritten, sealed or without seal; and if it be founded upon a bond or other contract having a penalty, the sum equitably due by virtue of its condition only, shall be set off:

2. It must be due to him in his own right, either as being the original creditor or payee, or as being the assignee and owner of the demand :

3. It must be a demand for real estate sold, or for personal property sold, or for money paid, or services done, or if it be not such a demand, the amount must be liquidated, or be capable of being ascertained by calculation :

4. It must have existed at the time of the commencement of the suit, and must then have belonged to the defendant :

5. It can be allowed only in actions founded upon demands, which could themselves be the subject of set-off, according to law.

6. If there be several defendants, the demands set off must be due to all of them jointly :

7. It must be a demand existing against the plaintiff in the action, unless the suit be brought in the name of the plaintiff who has no real interest in the contract upon which the suit is founded, in which case no set-off of a demand against the plaintiff shall be allowed, unless as hereinafter specified :

8. If the action be founded upon a contract other than a negotiable promissory note or bill of exchange, which has been assigned by the plaintiff, a demand existing against such plaintiff, or any assignee of such contract, at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, may be set off to the amount of the plaintiff's debt, if the demand be such as might have been set off against such plaintiff, or such assignee, while the contract belonged to him :

9. If the action be upon a negotiable promissory note or bill of exchange, which has been assigned to the plaintiff after it became due, a set-off to the amount of the plaintiff's debt may be made of a demand existing against any person or persons who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been set off against the assignor, while the note or bill belonged to him :

10. If the plaintiff be a trustee for any other, or if the suit be in the name of the plaintiff who has no real interest in the contract upon which the suit is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off as will satisfy the plain-

tiff's debt, if the same might have been set off in an action brought by those beneficially interested.

Notice to be plead or given.

SEC. 2. To entitle a defendant to a set-off, he must plead or give notice of the same.

Notice to be given with plea.

SEC. 3. Such notice must be given, together with the plea of the general issue, in those actions in which such issue may be pleaded, or with the plea of nul tiel record to an action of debt on judgment, or in the action of covenant, with a plea denying the execution of the instrument on which the plaintiff may have declared.

Judgment, how rendered when set-off equal or less.

SEC 4. If the amount of the set-off duly established, be equal to the plaintiff's debt or demand, judgment shall be entered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

How, when more than plaintiff's debt.

SEC. 5. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff, of record, when the contract, which is the subject of the suit, shall have been assigned before the commencement of such suit, nor for any balance due from any other person than the plaintiff in the action.

Set-offs allowed against executors.

SEC. 6. In suits brought by executors and administrators, demands existing against their testators or intestates, and belonging to the defendant at the time of their death, may be set off by the defendant in the same manner as if the action had been brought by and in the name of the deceased.

Judgment how rendered against them, &c,

SEC. 7. Whenever a set-off is established in a suit brought by executors or administrators, if judgment be rendered against them, the judgment shall be against them in their representative character, and shall be evidence of a debt established to be paid in the course of administration; but execution shall not issue thereon, until directed by the judge of probate who granted letters testamentary or of administration.

Set-offs by executors, trustees, &c.

SEC. 8. In actions against executors and administrators, and against trustees and others, sued in their representative character, the defendants may set off demands belonging to their testators or intestates, or those whom they represent, in the same manner as the persons so represented would have been entitled to set off the same, in an action against them.

CHAPTER 95.

CHAPTER 95.

OF CHANGE OF VENUE, AND OF REFERRING AND CONSOLIDATING CAUSES.

Of change of Venue.

For what causes change of venue allowed, and how made.

SECTION 1. If either party in any civil cause, in law or equity, which may be pending in any court of record in this state, shall fear that he will not receive a fair trial in the county in which such cause is pending, on account that the judge is interested or prejudiced, or is related to, or shall have been of counsel for either party, or that the adverse party has an undue influence over the minds of the inhabitants of the county where the action is pending, or that the inhabitants of such county are prejudiced against the applicant, or that a large number of the inhabitants of such county have an interest in the question involved in said suit, adverse to the applicant, so that he cannot expect a fair trial, such party may apply to the court in term time, or to any judge in vacation, by petition, setting forth the cause of the application, and praying a change of venue, accompanied by an affidavit verifying the facts in the petition stated; and such court or judge, reasonable notice of the application having been given to the opposite party, or his attorney, shall, if satisfied of the truth of the allegations, award a change of venue to some county where the causes complained of do not exist; and in all cases where the judge is interested, or is related to, or has been of counsel for either party, the court, in term time, may award a change of venue as aforesaid, in their discretion, without any application from either party.

When court may award change without application.

Duty of clerk to transmit papers, and how court to proceed.

SEC. 2. Whenever the court shall change the venue in any cause or matter, as aforesaid, it shall be the duty of the clerk of the court, forthwith, to transmit all papers on file in his office, relating to the said cause or matter, to the office of the clerk of the court for the county in which such cause may be ordered to be tried, and the circuit court of the county, to which said cause or matter shall be sent for trial, shall proceed to trial in the same manner, and to give judgment and award executions, as though the said cause had not been removed.

Costs to be taxed and to abide the event of the suit.

SEC. 3. The expenses attending the change of venue, and the costs which shall have accrued, shall be taxed by the proper officers, according to the rates established by law for like services; and shall abide the event of the suit.

Of Referring and Consolidating Causes.

When and how referees appointed; to report, &c.

SEC. 4. Whenever it shall appear probable in any cause depending in any court of record, that the trial of the same will require the examination of a long account on either side, the said court, at any time after issue joined in such case, may refer such cause by rule of court to referees, who shall be three such persons as the parties may agree upon, and if they should not agree, the said court shall appoint them; which referees shall hear and examine the matters in controversy and report thereon, upon pain of contempt.

Entry to be made on record and given; how judgment entered.

SEC. 5. An entry shall be made upon the record of such reference, and day shall be given to the parties from time to time until the referees shall make a report in the premises, or they be thereof discharged; and if the report of the referees, or a majority of them, shall be confirmed by the said court, and any sum be thereby found for the plaintiff, judgment shall be entered for the same with costs, if by law the plaintiff would have received costs, had a verdict been rendered in the same cause for a sum so reported to be due.

Judgment, when referees report nothing due plaintiff, or any sum due defendant.

SEC. 6. If the referees shall report that there is not any thing due to the plaintiff, and the report be confirmed, then judgment shall be entered against the plaintiff that he take nothing by his suit, and the defendant shall in such case have judgment for his costs, if by law such defendant would have been entitled to costs, if a verdict had been passed in the same cause for him; and if in any cause the referees shall report any sum due the defendant, and the report be confirmed, then judgment shall be entered against the plaintiff, that he take nothing by his suit; and further, the defendant shall recover against the plaintiff the sum so reported to be due, with costs of suit to be taxed, and shall have execution for the same, unless the plaintiff prosecute as executor or administrator, in which case the sum reported, with costs taxed, shall be deemed a debt of record to be paid in the course of administration, and the defendant for the recovery thereof, shall have an action of debt, or a scire facias against the plaintiff.

Report not to be accepted until proved by affidavit.

SEC. 7. No report of referees shall be accepted by the court until the execution thereof shall have been proved by affidavit or otherwise, according to the practice of courts in like cases.

When court may employ commissioner to examine and make report.

SEC. 8. It shall be lawful for the court, in such cases as may require a report which cannot be performed without delay to other business, to employ one or more commissioners, and to cause a reasonable allowance for their services to be taxed in the bill of costs.

When defendant may move to consolidate actions and strike out counts.

SEC. 9. The defendant, at any time before issue joined, may move the court to consolidate actions, or to strike out any superfluous counts in the declaration, according to the usages of law.

CHAPTER 96.

OF THE SURVIVAL OF ACTIONS, AND OF DEATH, MARRIAGE, OR OTHER DISABILITY, OCCURRING AFTER THE COMMENCEMENT OF THE SUIT.

Where the cause of action survives, the death of either party not to abate suit.

SECTION 1. In all personal actions, the cause of which does by law survive, if there is only one plaintiff, or one defendant, and the sole plaintiff or defendant shall die after the commencement of the action, and before the final judgment, the action may proceed and be prosecuted by or against the surviving party, and by or against the executor or administrator of the deceased party, in the manner provided in this chapter.

The death to be suggested on the record, and executor, &c., to prosecute or defend.

SEC. 2. The death of the party shall be suggested on the record, and his executor or administrator may thereupon appear and take upon himself the prosecution or defence of the suit, as the case may be; and it shall thenceforth be conducted in the same manner as if it had been originally commenced by or against the executor or administrator.

If executor, &c., does not voluntarily appear, surviving party may obtain order for appearance.

SEC. 3. If the executor or administrator does not voluntarily appear on or before the first day of the next term after the death of such party, the surviving party may have an order of course, that the executor or administrator appear and take upon himself the prosecution or defence of the suit, within thirty days after service of notice of such order.

Judgment in case of default.

SEC. 4. If the executor or administrator does not appear within the time limited by such order, or within such further time as the court shall allow for that purpose, he shall be nonsuited or defaulted, and judgment shall be rendered against him in his representative capacity, and shall be evidence of debt established to be paid in the course of administration.

When suit brought by unmarried woman, on her marriage, husband may join.

SEC. 5. If any action or suit is brought by an unmarried woman, either alone or jointly with others, and she shall be married before final judgment, her husband may on his own motion, be admitted as a party to prosecute the suit with her, and with the other plaintiffs, if there be any, in like manner as if he had originally joined in the suit.

Actions which survive.

SEC. 6. In addition to the actions which survive by the common law, the following shall also survive, that is to say: Actions of replevin and trover, actions for assault and battery, or false imprisonment, or for goods taken and carried away, and actions for damages done to real or personal estate.

Measure of damages in such cases.

SEC. 7. When any action mentioned in the preceding section, shall be prosecuted to judgment against the executor or administrator, the plaintiff shall be entitled to recover only for the value of the goods taken, or for the damages actually sustained, without any vindictive or exemplary damages, or damages for alleged outrage to the feelings of the injured party.

Where several plaintiffs or defendants, and one dies, action to proceed.

SEC. 8. When there are several plaintiffs or defendants in any personal action, the cause of which survives, either by the common law or by the provisions of this chapter, and any of them shall die before final judgment, the action shall proceed at the suit of the surviving plaintiff, or against the surviving defendant, as the case may be.

If in such case all plaintiffs or defendants die, how action to proceed.

SEC. 9. If, in such case, all the plaintiffs or all the defendants shall die before final judgment, the action may be prosecuted or defended by or against the executor or administrator of the last surviving plaintiff or defendant, respectively, in the same manner as if such last survivor had originally been the only plaintiff or defendant.

In real and mixed actions, if demandant die, his heir, &c., may prosecute.

SEC. 10. In all real and mixed actions, if the demandant shall die before final judgment, his heir, within such time as the court shall allow, may appear and prosecute the suit, in the same manner as if the action had been originally commenced by him, or the action may be prosecuted by the executor or administrator for the benefit of the heir, or of the creditors of the deceased.

If one of several demandants in such action die, how proceedings to be continued.

SEC. 11. If there are several demandants in such action, and any of them shall die before final judgment, the heir, executor or administrator of the deceased party may be admitted, on motion, to prosecute the suit jointly with the survivors, in the same manner as if he had joined with them in commencing the suit.

Ib.

SEC. 12. If the interest of the deceased party passes to the surviving demandants, or if there be no motion for the admission of another person as heir, executor or administrator, within the time allowed by the court for that purpose, the surviving demandants may prosecute the suit for so much of the premises in question as may be claimed by them.

How such action to be prosecuted where any joint defendants die.

SEC. 13. When there are several defendants in any real or mixed action, and any of them shall die before final judgment, the action may be prosecuted against the surviving defendants, for so much of the premises as they shall hold or claim.

How action to be prosecuted in case either party becomes insane.

SEC. 14. If during the pendency of any action or suit, either party shall become insane, the action may be prosecuted or defended by his guardian, in like manner as if it had been commenced after the appointment of the guardian, or the court may appoint a guardian for the suit, as the case may require.

Death of public officer, &c., prosecuting, not to abate suit, but successor may prosecute same.

SEC. 15. When any action is brought by, or in the name of, any public officer, or by any trustee appointed by virtue of any statute, his death or removal shall not abate the writ; but it may be prosecuted by his successor, provided there be a successor who might have originally commenced and prosecuted the like action.

Suits in the name of one for the use of another, not to abate by death of plaintiff, &c.

SEC. 16. Suits instituted in the name of one for the use of another, shall not abate by the death of the person whose name is used as plaintiff, but shall be prosecuted to judgment and execution as though the person for whose use they may have been instituted was plaintiff; and persons for whose use suits are prosecuted shall be considered as parties to the proceedings, so far as to authorize judgment against them for costs, and to make them liable for all fees of officers, as though their names were used as plaintiffs; and so far as to allow them to prosecute appeals, writs of certiorari, and writs of error, and to execute the necessary bonds for these purposes.

CHAPTER 97.

OF GRAND AND PETIT JURORS.

Who liable to serve as jurors.

SECTION 1. All persons who are citizens of the United States and qualified electors of this state, shall be liable to be drawn as jurors except as hereinafter provided.

Who exempt.

SEC. 2. The following persons shall be exempt from serving as jurors: the governor, lieutenant governor, secretary and treasurer of the state, all judges of courts of record, acting commissioners of the board of public works, register and treasurer of the state land office, superintendent of public instruction, clerks of courts, registers of deeds, sheriffs and their deputies, coroners, constables, all officers of the United States, attorneys and counsellors at law, and solicitors and counsellors in chancery, officers of the university, officers of colleges, ministers of the gospel, preceptors and teachers of incorporated academies, one teacher in each common school, practicing physicians and surgeons, one miller to each grist mill, one ferryman to each licensed ferry, all superintendents, engineers and collectors of any canal or railroad authorized by the laws of this state, any portion of which shall be actually constructed and used, all members of companies of firemen organized according to law, all persons more than sixty years of age, and all persons not of sound mind or discretion, and persons subject to any bodily infirmity amounting to any disability; and all persons shall be disqualified from serving as jurors who have been convicted of any infamous crime.

When and how county supervisors to make lists of jurors.

Sec. 3. The board of county supervisors, at their annual meeting in November, shall select from the poll list of the different towns in their respective counties, and the counties attached thereto for judicial purposes, last returned to the clerk of their board, and shall make out a list of seventy-five persons, properly qualified to serve as grand jurors, and another list of one hundred and forty persons, properly qualified to serve as petit jurors, which list, certified and signed by the chairman of the board making such lists, shall be forthwith delivered to the clerk of the circuit court: Provided, that if in any of the counties in this state, the county supervisors shall not be able to select the number required by this section, for grand and petit jurors, they shall be authorized to select a less number, and the highest possible.

Circuit judge may order less number of jurors to be summoned, &c.

Sec. 4. It shall and may be lawful for the judge of the circuit court in any of the counties of the state, to order a less number of grand or petit jurors to be summoned to attend the sessions of said court, than is prescribed in the next preceding section; and such order made and filed in the clerk's office of the proper county, shall be deemed sufficient authority to the clerk to issue a venire for the number mentioned in such order: Provided, that the number of grand jurors shall not be less than sixteen, nor the number of petit jurors less than twenty: and provided further, that if no order shall have been made at least fifteen days before the sitting of any court, the clerk shall proceed to draw the number prescribed by law.

If lists not made out in November, when may be afterwards.

Sec. 5. If for any cause such lists should not be made and delivered as aforesaid, by the board of county supervisors at their annual meeting in November, it shall be their duty to make out and deliver the same as aforesaid, at any regular meeting of said board.

Suitable persons to be selected.

Sec. 6. In preparing such lists the said board of county supervisors shall select such persons only as they know, or have good reason to believe, are possessed of the qualifications by law required of persons to serve as jurors, and are of approved integrity, fair character, sound judgment and well informed.

CHAPTER 97.

Clerk to put names in boxes.

SEC. 7. On receiving such lists, the clerk of the circuit court shall write the names of the persons contained therein, on separate pieces of paper, and shall roll up or fold such pieces of paper, each in the same manner as near as may be, so that the name written thereon shall not be visible, and shall deposite such pieces of paper, those containing the names of the grand jurors in one box, and those containing the names of petit jurors in another box, from which they shall be drawn as hereinafter provided.

Jurors, when and how drawn.

SEC. 8. At least fifteen days before the sitting of any court, the clerk of the court, in the presence of the sheriff or under sheriff, and a justice of the peace, shall proceed to draw the names of twenty-three persons from the box containing the names of the grand jurors, to serve as grand jurors at such court, and the names of thirty-six persons from the box containing the names of petit jurors, to serve as petit jurors at such court.

When venires to be issued; when jurors to appear.

SEC. 9. The clerk of the circuit court shall, twelve days at least before the first day of the court, issue and deliver to the sheriff or under sheriff of the county two venires, one for the grand jury and one for the petit jury, under the seal of the court, commanding him to summon the persons so drawn as grand jurors, to appear before the said court, at or before the hour of eleven o'clock, A. M., on the first day of the term thereof, to serve as grand jurors; and the persons so drawn as petit jurors, to appear before the said court, at or before the hour of eleven o'clock A. M., on the second day of the term thereof, to serve as petit jurors.

How sheriff to summon jurors, and make return of venires.

SEC. 10. The sheriff or under sheriff shall summon the persons named in such venires to attend such court as grand or petit jurors, as the case may be, at least four days previous to the sitting of such court, by giving personal notice to each person, or by leaving a written notice at his place of residence, with some person of proper age. He shall return such venires to the court at the opening thereof, specifying those who were summoned, and the manner in which each person was notified.

Penalty on juror for non-attendance.

SEC. 11. If any person duly drawn and summoned to attend as a juror in any court, shall neglect to attend without any sufficient excuse, he shall pay a fine not exceeding forty dollars, which shall be imposed by the court to which the juror was summoned, and shall be paid into the county treasury.

Number of grand jurors to be sworn.

SEC. 12. There shall not be more than twenty-three, nor less than sixteen persons, sworn on any grand jury; and from the persons summoned to serve as grand jurors and appearing, the court shall appoint a foreman.

Foreman.

Deficiency of grand jurors, how supplied.

SEC. 13. In case of a deficiency of grand jurors in any court, writs of venire facias may be issued to the proper officer to return forthwith such farther number of grand jurors as may be required.

Officer to summon others, and they to serve.

SEC. 14. The proper officer shall summon such persons accordingly, who shall be bound forthwith to attend and serve, unless excused by the court, in the same manner, and subject to the same penalties for neglect, as persons duly drawn by the clerk of the circuit court, and summoned as herein provided.

Person accused may object to any grand juror, &c.

SEC. 15. Any person held to answer to any criminal charge may object to the competency of any one summoned to serve as a grand juror, before he is sworn, on the ground that he is a prosecutor or complainant upon any charge against such person, or that is a witness on the part of the prosecution, and has been subpœnaed or been bound in a recognizance as such, and if such objection be established the person summoned shall be set aside.

Clerk to prepare list of grand jurors; two to be first sworn.

SEC. 16. The clerk of the court shall prepare a list of the names of all the persons returned as grand jurors, and when the jury is to be empanneled, two persons in the list shall be first called, and the following oath shall be administered to them:

Form of oath.

"You, as grand jurors of this inquest, for the body of this county of ————, do solemnly swear (or affirm, as the case may be,) that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the counsel of the state of Wisconsin, your fellows and your own, you shall keep secret; you shall present no man for envy, hatred or malice, neither shall you leave any man unpresented for love, fear, favor, affection or hope of reward, but you shall present things truly as they come to your knowledge, according to the best of your understanding, so help you God." The other jurors shall then be called in such divisions as the court may deem proper, and the following oath shall be administered to them: "The same oath which your fellows have taken on their part, you and each of you on your behalf, shall well and truly observe and keep, so help you God."

How the other jurors to be sworn.

Foreman, &c., to administer oaths to witnesses; to return list of same, &c.

SEC. 17. The foreman of every grand jury, district attorney, or other prosecuting officer, who shall be before them, shall have authority to administer all oaths and affirmations in the manner prescribed by law, to witnesses who shall appear before such jury for the purpose of testifying in any matter of which they may have cognizance; and the foreman shall return to the court a list under his hand, of all witnesses who shall have been sworn before the grand jury during the term, and the same shall be filed of record by the clerk.

Grand jury to appoint clerk to preserve minutes, &c.

SEC. 18. The grand jury may appoint one of their number to be their clerk to preserve minutes of the proceedings before them, which minutes shall be delivered to the attorney general or district attorney, when the grand jury shall so direct.

May be again summoned at same term.

SEC. 19. When the grand jury attending any court shall have been dismissed before the court is adjourned without day, they may be summoned to attend again in the same term, at such time as the court shall direct, for the dispatch of any business that may come before them.

When grand juror, &c., not to disclose fact of indictment found.

SEC. 20. No grand juror or officer of the court, if the court shall so order, shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on such indictment, until such person has been arrested.

Not to testify how jurors voted, &c.

SEC. 21. No grand juror shall be allowed to state or to testify in any court, in what manner he or any other member of the jury voted on any question before them, or what opinion was expressed by any juror in relation to such question.

May be required to testify how witness testified.

SEC. 22. Members of the grand jury may be required by any court to testify whether the testimony of a witness, examined before such jury, is consistent with or different from the evidence given by such witness before such court; and they may also be required to disclose the testimony given before them by any person upon a complaint against such person for perjury, or upon his trial for such offence.

When district attorney to attend grand jury, &c.

SEC. 23. Whenever required by the grand jury, it shall be the duty of the district attorney of the county to attend them, for the purpose of examining witnesses in their presence, or of giving them advice upon any legal matter, and to issue subpœnas and other process to bring up witnesses.

Petit jurors, when taken from bystanders, &c.

SEC. 24. When by reason of challenge, or otherwise, a sufficient number of jurors duly drawn and summoned cannot be obtained for the trial of any cause, civil or criminal, the court shall cause jurors to be returned from the bystanders, or from the county at large, to complete the panel.

By whom such jurors returned.

SEC. 25. The jurors so returned from the bystanders, shall be returned by the sheriff or his deputy, or by a coroner, or by any disinterested person appointed therefor by the court.

Qualifications of same.

SEC. 26. The persons so returned shall be such as are qualified and liable to be drawn as jurors, according to the provisions of law.

Juror may be examined as to his bias or interest, &c.

SEC. 27. The court shall, on the motion of either party in any suit, examine on oath any person who is called as a juror therein, to know whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection; and if it shall appear to the court that the juror does not stand indifferent in the cause, another shall be called and placed in his stead for the trial of that cause.

To be set aside, if not indifferent.

Liability to be taxed, no cause of challenge.

SEC. 28. In indictments and penal actions for the recovery of any sum of money or other thing forfeited, it shall not be a cause of challenge to any juror that he is liable to pay taxes in any county or town which may be affected by such recovery.

When verdict not to be set aside for irregularity.

SEC. 29. No irregularity in any writ of venire facias, or in the drawing, summoning, returning or empannelling of petit jurors, shall be sufficient to set aside a verdict, unless the party making the objection was injured by the irregularity, or unless the objection was made before the returning of the verdict.

Proceedings when jury cannot agree.

SEC. 30. When a jury, after due and thorough deliberation upon any cause, shall return into court without having agreed on a verdict, the court may state anew the evidence, or any part of it, and may explain to them anew the law applicable to the case, and may send them out again for further deliberation; but if they shall return a second time without having agreed on a verdict, they shall not be sent out again without their own consent, unless they shall ask from the court some further explanation of the law.

When jury may view premises.

SEC. 31. The jury may, in any case, at the request of either party, be taken to view the premises or place in question, or any property, matter or thing relating to the controversy between the parties, when it shall appear to the court that such view is necessary to a just decision: Provided, the party making the motion shall advance a sum sufficient to defray the expenses of the jury and the officers who attend them in taking the view; which expenses shall afterwards be taxed like other legal costs, if the party who advanced them shall prevail in the suit.

Penalty on officers for neglect to draw and summons jurors.

SEC. 32. When by a neglect of any of the duties required in this chapter to be performed by any of the officers or persons herein mentioned, the jurors to be returned shall not be duly drawn and summoned to attend the court, every person guilty of such neglect shall pay a fine not exceeding twenty dollars, to be imposed by the same court, into the treasury of the county in which the offence is committed.

Penalty on clerk for fraud in relation to drawing jurors, &c.

SEC. 33. If any clerk of any court shall be guilty of any fraud, either by practicing on a jury box previously to a draft, or in drawing a juror, or in returning into the box the name of any juror which had been lawfully drawn out, and drawing or substituting another in his stead, or in any other way in the drawing of jurors, he shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, to be paid into the county treasury of the county in which the offence is committed.

Clerk to deliver to jurors certificate of attendance; same to be allowed by supervisors.

SEC. 34. It shall be the duty of the clerk of the circuit court, at the end of each term of such court, or within ten days thereafter, to make out a certificate to each juror, certifying the number of days attendance, the number of miles travelled, and the amount of compensation due him: which certificate shall be allowed by the board of county supervisors, as other demands against said county.

When and how tales jurors may be summoned.

SEC. 35. If, for any cause, the whole number of any grand or petit jury should fail to be summoned according to the provisions of this chapter, the judge of the court may direct the clerk to issue a venire to the sheriff, or other officer, directing him forthwith to summon a sufficient number of talesmen for such grand or petit jury.

Three peremptory challenges allowed in civil causes.

SEC. 36. On the trial of any civil cause now pending, or hereafter to be commenced, in any of the circuit courts of this state, each party shall be entitled to three peremptory challenges of jurors empannelled in said cause.

Challenges by prosecuting officer in capital cases.

Same by either party in other criminal cases.

SEC. 37. On the trial of criminal cases, when the punishment is capital, the prosecuting officer shall be entitled to challenge, peremptorily, six of the persons returned as jurors, and no more; and on the trial of criminal cases, where the punishment is not capital, the prosecuting officer and the defendant shall each be entitled to challenge, peremptorily, four of said jurors, and no more.

CHAPTER 98.

OF EVIDENCE.

Of the issuing and service of subpœnas, and the liability of witnesses thereon.

Who to issue subpœnas, &c.

SECTION 1. Every clerk of a court of record, and every justice of the peace, may issue subpœnas for witnesses in all civil cases pending before any court, or before any magistrates, arbitrators or other persons authorized to examine witnesses, and the subpœna shall be in the form heretofore adopted and commonly used.

By whom and how served.

SEC. 2. Such subpœna may be served by any person, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode.

Witness not obliged to attend unless fees paid or tendered.

SEC. 3. No person shall be obliged to attend as a witness unless the fees are paid or tendered to him which are allowed by law for one day's attendance as a witness, and for travelling to and returning from the place where he is required to attend.

Liability of witness for failure to attend if subpœnaed.

SEC. 4. If any person duly subpœnaed and obliged to attend as a witness, shall fail so to do, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in an action on the case.

Liable as for a contempt of court.

SEC. 5. Such failure to attend as a witness in any court of record, shall also be considered a contempt of the court, and may be punished by a fine not exceeding twenty dollars.

Court may issue attachment to bring up witness.

SEC. 6. The court in such case may issue an attachment to bring such witness before them to answer for the contempt, and also to testify as a witness in the cause in which he was summoned.

Of taking the Testimony of Witnesses within this State.

Depositions may be taken to be used in cases other than criminal.

SEC. 7. Depositions may be taken in the manner and according to the regulations provided in this chapter, to be used before any magistrates or other persons authorized to examine witnesses in any other than criminal cases.

When may be taken.

SEC. 8. When a witness whose testimony is wanted in any civil cause pending in this state, shall live more than thirty miles from the place of trial, or shall be about to go out of the state, and not to return in time for the trial, or is so sick, infirm or aged as to make it probable that he will not be able to attend at the trial, his deposition may be taken in the manner hereinafter provided.

Notice to be issued by justice, and when.

SEC. 9. At any time after the cause is commenced by the service of process or otherwise, or after it is submitted to arbitrators or referees, either party may apply to any justice of the peace, who shall issue a notice to the adverse party to appear before the said justice, or any other justice of the peace, at the time and place appointed for taking the deposition, and to put such interrogatories as he may think fit.

May be served on agent or attorney.

SEC. 10. The said notice may be served on the agent or attorney of the adverse party, and shall have the same effect as if served on the party himself.

Service on one of several parties sufficient.

SEC. 11. When there are several persons plaintiffs or defendants, or parties on either side in the cause, a notice served on either of them shall be sufficient.

How served, and time given.

SEC. 12. The notice shall be served by delivering an attested copy thereof to the person to be notified, or by leaving such copy at his place of abode, allowing in all cases not less than twenty-four hours after such notice before the time appointed for taking the depositions, and also allowing time for his travel to the place appointed, after being notified, not less than at the rate of one day, Sundays excepted, for every twenty miles travel.

When notice need not be given.

SEC. 13. The written notice before prescribed, may be wholly omitted, if the adverse party or his attorney shall in writing waive the right to it.

Oath of deponent; testimony to be taken in writing.

SEC. 14. The deponent shall be sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which the deposition is taken; and he shall then be examined by the parties, if they think fit, or by the jnstice, and his testimony shall be taken in writing.

Manner of examination.

SEC. 15. The party producing the deponent shall be allowed first to examine him, either upon verbal or written interrogatories, on all the points which he shall deem material, and then the adverse party may examine the deponent in like manner, after which either party may propose such further interrogatories as the case may require.

Deposition, by whom written; to be subscribed

SEC. 16. The deposition shall be written by the justice, or by the deponent, or by some disinterested person in the presence and under the direction of the justice, and it shall be carefully read to or by the deponent, and shall then be subscribed by him.

Form of certificate to be annexed to deposition.

SEC. 17. The justice shall annex to the deposition a certificate, substantially as follows:

"STATE OF WISCONSIN, } ss.
——— *County*, }

I, A. B., justice of the peace in and for said county, do hereby certify that the above deposition was taken before me, at my office, in the town of ———, in said county, on the ——— day of ———, 18—, at — o'clock, ———; that it was taken at the request of the plaintiff (or defendant,) upon verbal (or written) interrogatories; that it was reduced to writing by myself, (or by deponent, or by ——— ———, a disinterested person, in my presence, and under my direction;) that it was taken to be used in the suit of A. B. vs. C. D., now pending in ——— court, and that the reason for taking it was (here state the true reason); that ——— attended at the taking of said deposition, (or that a notice, of which the annexed is a copy, was served upon him on the ——— day of ———, 18—;) that said deponent, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth, relative to said cause, and that said deposition was carefully read to (or by) said deponent, and then subscribed by him.

Dated, ———
A. B.,
Justice of the Peace.

How to be delivered to court, &c.; by whom to be opened.

SEC. 18. The deposition shall be delivered by the justice to the court, or arbitratrors or referees, before whom the cause is pending, or shall be inclosed and sealed by him and directed to them, and shall remain sealed until opened by the said court or clerk thereof, or arbitrators or referees.

When not to be used.

SEC. 19. No deposition shall be used, if it shall appear that the reason for taking it no longer exists: Provided, however, that if the party producing the deposition in such case shall show any sufficient cause then existing for using the deposition, it may be admitted.

What objections to deposition may be taken on trial.

SEC. 20. Every objection to the competency or credibility of the deponent, and to the propriety of any question put to him, or of any answer made by him, may be made when the deposition is produced, in the same manner as if the witness were personally examined on the trial: Provided, that all objections to any interrogatory shall be made before it is answered; and if the interrogatory is not withdrawn, the objection shall be noted in the deposition, or otherwise the objection shall not be afterwards allowed.

When may be used in second suit for same cause

SEC. 21. When the plaintiff in any suit shall discontinue it or become nonsuit, and another suit shall afterwards be commenced for the same cause between the same parties or their respective representatives, all depositions lawfully taken for the first suit may be used in the second in the same manner, and subject to the same conditions and objections as if originally taken for the second suit: Provided, that the deposition shall have been duly filed in the court where the first suit is pending, and shall remain in the custody of the court from the termination of the first suit until the commencement of the second.

On appeals, when may be used in court above.

SEC. 22. When a suit shall have been appealed from one court to another, all depositions lawfully taken to be used in the court below, may be used in the appellate court, in the same manner and subject to such exception for informality or irregularity, and none other, as were taken to such depositions in writing in the court below.

Court may make rules respecting depositions.

SEC. 23. The courts may from time to time make such rules as they shall find proper and convenient, as to the time and manner of filing depositions and the safe keeping thereof, and any other regulations concerning the taking and using of depositions, which may not be inconsistent with the provisions of law.

When and how witness may be compelled to give his deposition.

SEC. 24. Any witness may be summoned and compelled to give his deposition at any place within twenty miles of his abode, in like manner and under the same penalties as he may be summoned and compelled to attend as a witness in any court.

Of taking the Testimony of Witnesses out of this State.

Deposition of witness out of state, how may be taken and used.

SEC. 25. The deposition of any witness without this state, may be taken under a commission issued to one or more competent persons in any state or country, by the court in which the cause is pending, and the deposition may be used in the same manner, and subject to the same conditions and objections as if it had been taken in this state.

To be taken on written interrogatories.

SEC. 26. Every such deposition shall be taken upon written interrogatories, to be exhibited to the adverse party or his attorney, and cross interrogatories to be filed by him if he shall think fit.

Court may make rules for taking same.

SEC. 27. The courts may make rules as to the issuing of commissions, either in vacation or term time, and the filing of interrogatories, and all other matters relating to depositions taken out of the state: Provided, that such rules be not inconsistent with the provisions of law.

When depositions, &c., otherwise taken out of state may be admitted.

SEC. 28. All depositions and affidavits taken out of the state in any other manner than is prescribed in the three preceding sections, if taken before any notary public or other person authorized by the laws of any state or country to take depositions, may be admitted or rejected, at the discretion of the court: Provided, that no such deposition or affidavit shall be admitted unless it shall appear that the adverse party had sufficient notice of the taking thereof, and opportunity to cross-examine the witness.

Of Proceedings to perpetuate the Testimony of witnesses within this State.

Evidence, how to be perpetuated.

SEC. 29. When any person shall be desirous to perpetuate the testimony of any witness, he shall make a statement in writing, setting forth briefly and substantially his title, claim or interest, in or to the subject concerning which he desires to perpetuate the evidence, and the names of all other persons interested or supposed to be interested therein, and also the name of the witness proposed to be examined, and shall deliver the said statement to a judge of a court of record, requesting him to take the deposition of the said witness.

Notice to be given, and how.

SEC. 30. The said judge shall thereupon cause notice to be given of the time and place appointed for taking the deposition, to all persons mentioned in the said statement as interested in the case, which notice shall be given in the same manner as is prescribed in this chapter, respecting notice upon taking a deposition in this state to be used in any cause here pending.

Deposition, how taken and certified.

SEC. 31. The deponent shall be sworn and examined, and his deposition shall be written, read and subscribed in the same manner as is prescribed respecting the other depositions before mentioned, and the judge shall annex thereto a certificate under his hand, of the time and manner of taking it, and that it was taken in perpetual remembrance of the thing; and he shall also insert in the certificate the names of the persons at whose request it was taken, and of all those who were notified to attend, and of all who did attend the taking thereof.

To be recorded, and where.

SEC. 32. The deposition with the certificate, and also the written statement of the party at whose request it was taken, shall, within ninety days after the taking thereof, be recorded in the registry of deeds in the county where the land lies, if the deposition relates to real estate; otherwise in the county where the parties or some of them reside.

When and how may be used.

SEC. 33. If any suit shall, either at the time of taking such deposition, or at any time afterwards, be pending between the person at whose request it was taken and the persons named in the said written statement, or any of them, who were notified as aforesaid, or any persons claiming under either of the said parties, respectively, concerning the title, claim or interest set forth in the statement, the deposition so taken, or a certified copy of it from the registry of deeds, may be used in such suit, in the same manner, and subject to the same conditions and objections as if it had been originally taken for the said suit.

How witnesses compelled to give such depositions.

SEC. 34. Any witness may be summoned and compelled to give his deposition in perpetual remembrance of the thing, as before prescribed, in like manner and under the same penalties as are provided in this chapter respecting other depositions taken in this state.

Of Proceedings to Perpetuate the Testimony of Witnesses out of this State.

Depositions to perpetuate testimony of witnesses out of state, how taken.

SEC. 35. Depositions to perpetuate the testimony of witnesses living without the state, may be taken in any state, or in any foreign country, upon a commission to be issued by any court of record, in the manner hereinafter provided.

Ib.

SEC. 36. The person who proposes to take the deposition shall apply to any such court, and file therein a statement like that before prescribed, to be delivered to the judge or justice of the peace, upon taking such a deposition within this state; and if the subject of the proposed deposition relate to real estate within this state, the statement shall be filed in the county where the land, or any part thereof lies; otherwise in the county where the parties, or some of them, reside.

Notice to be given, and how.

SEC. 37. The court shall order notice of such application and statement to be served on all the persons mentioned therein as adversely interested in the case, and living within the state; which notice shall be served fourteen days at least before the time therein appointed for hearing the parties.

When court to issue commission.

SEC. 38. If upon such hearing of the parties, or of the applicant alone, should no adverse party appear, the court shall be satisfied that there is sufficient cause for taking the deposition, they shall issue a commission therefor, in like manner as for taking a deposition to be used in any cause pending in the same court.

How deposition to be taken and returned.

SEC. 39. The deposition shall be taken upon written interrogatories, filed by the applicant, and cross interrogatories, filed by any party adversely interested, if he shall think fit; and it shall be taken and returned substantially in the same manner as if taken to be used in any cause pending in the same court.

Person applying may file statement in clerk's office in vacation, &c.

SEC. 40. The person who proposes to take the deposition may, at his election, file his statement in the clerk's office in vacation, and may cause notice thereof to be given to the persons therein named as adversely interested, by serving them with an attested copy of the said statement, fourteen days at least before the next term of the court; and the court may thereupon proceed to hear the parties, and to issue the commission as before provided.

Supreme court may make rules respecting such depositions.

SEC. 41. The supreme court may from time to time make rules as to taking depositions to perpetuate the testimony of witnesses without the state, when taken under a commission from any court of record, and as to the filing and recording of such depositions: Provided, that such rules be not inconsistent with the provisions of law.

How same may be used.

SEC. 42. All depositions to perpetuate the testimony of witnesses, taken at any place without this state, according to the provisions of this chapter, may be used in like manner as if taken within this state.

Of Proceedings to Perpetuate the Testimony of Witnesses within and without this State, as against all persons.

How taken to be evidence against all persons.

SEC. 43. Depositions to perpetuate the testimony of witnesses, within or without the state, so that the same may be evidence against all persons, may be taken upon a commission to be issued, after public notice, by any court of record.

Ib.

SEC. 44. The person who desires to have such deposition taken may apply to any such court, in the manner before prescribed in the case of taking a deposition to perpetuate the testimony of a witness living without the state; and all the proceedings thereon shall be the same as are prescribed in the case last mentioned.

Ib., and publication of notice, &c.

SEC. 45. The court shall, in addition to the proceedings so before prescribed, inquire, upon the oath of the applicant or otherwise, at their discretion, as to all persons known or supposed to be interested in the case; and shall, in the commission, direct the commissioner or commissioners, to publish in such newspaper or newspapers, within or without the state, or both, or in such other manner as the court shall consider most effectual, such notice of the time and place of taking such deposition, and of the subject matter thereof, as the court shall think proper, which notice shall be addressed, specially by name, to all persons who are known or supposed to be interested in the case, and generally to all others, that they may attend and propose cross interrogatories to the witness; and the court may also require personal notice of the time and place of taking, and of the subject matter of such deposition, to be given to such persons, and in such manner as under all the circumstances shall seem proper.

Deposition to be recorded, and where.

SEC. 46. Such deposition having been taken and returned to the court, by whose order the commission issued, and being found by the court to have been taken according to law and the directions contained in the commission, the court shall order it to be recorded within thirty days in the registry of deeds for the county in which the land lies, if the deposition relate to real estate; otherwise in the county in which the parties or some of them reside.

When and by whom same may be used.

SEC. 47. Any deposition taken and recorded under the provisions of the four preceding sections, or a certified copy thereof, from the registry, may be used by the person at whose request it was taken, or by any person claiming under him, against any person whatever, in any suit or process, wherein shall be brought in question the title, claim or interest, set forth in the statement upon which the commission was founded, in the same manner and subject to the same conditions and objections, as if it had been originally taken for said suit or process.

CHAPTER 98.

Of Depositions taken in this State to be used in courts of other States and Countries.

Witness may be compelled to give his deposition, to be used in another state; how may be taken.

SEC. 48. Any witness may be summoned and compelled in like manner, and under the same penalties as are prescribed in this chapter, to give his deposition in any cause pending in a court, in any state or government; which deposition may be taken before any justice of the peace in this state, or before any commissioners that may be appointed under the authority of the state or government in which the suit is pending; and if the deposition is taken before such commissioners, the witness may be summoned and compelled to appear before them, by process from any justice of the peace in this state.

Of the Competency of certain persons as Witnesses.

Members of certain corporations not incapacitated as witnesses.

SEC. 49. In all cases in which any county, city, town, district or precinct, or any parish or incorporated or legally organized religious society, or any school district, or any incorporated mutual fire insurance company, or rail road, or plank road company, shall be, in their corporate capacity, parties to, or interested in any suit, whether of a civil or criminal nature, any member of such corporation may be admitted as a competent witness, to testify on trial or to give his deposition : Provided, there is no sufficient objection to his competency, except that of his being such member of the corporation.

Surety in suit, &c., how may be discharged and sworn.

SEC. 50. If any person shall be disqualified to testify in any suit, by reason of having indorsed the original writ or process, or of being a surety in the recognizance of the appellant, or in a replevin bond, or of being surety in the suit in any manner, he may be discharged by order of the court, so as to be sworn as a witness, provided another sufficient indorser or surety be substituted in his stead, to be liable in like manner and to the same extent that he would have been.

Persons guilty of crime not incompetent unless convicted.

SEC. 51. No person shall be deemed an incompetent witness by reason of having committed any crime, unless he has been convicted thereof.

Of the Printed Statutes of this State, of the Records and Proceedings of Courts and the Laws of other States, and of Foreign Laws as Evidence.

When records of courts of other states, &c, evidence.

SEC. 52. The records and judicial proceedings of any court of any state or territory, or of the United States, shall be admissible in evidence, in all cases in this state, when authenticated by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed.

When printed statutes, &c., of state evidence.

SEC. 53. The printed copies of all statutes, acts and resolves of this state, whether of a public or private nature, which shall be published under the authority of the state, shall be admitted as sufficient evidence thereof, in all courts of law and on all occasions whatsoever.

SEC. 54. Printed copies of the statute laws of any state or territory of the United States, if purporting to be published under the authority of their respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts of law, and on all other occasions in this state as prima facie evidence of such laws. Ib, of other states, &c.

SEC. 55. The unwritten or common law of any state or territory of the United States, may be proved as facts by parol evidence, and the books of reports of cases adjudged in their courts may also be admitted as evidence of such law. Common law of other states, how proved.

SEC. 56. The existence and the tenor or effect of all foreign laws may be proved as facts by parol evidence; but if it shall appear that the law in question is contained in a written statute or code, the court may in their discretion reject any evidence of such law that is not accompanied by a copy thereof. Foreign laws, how proved.

Of the Swearing of the opposite party as a Witness.

SEC. 57. In all actions or proceedings at law, in civil cases, in any of the courts of this state, either party may give notice to the adverse party that he wishes to have said party sworn as a witness in such cause, and if said adverse party shall not appear at the time of trial, or shall refuse to be sworn or testify, or shall fail to take and produce his deposition as hereinafter provided, then the party giving such notice, if the same shall be deemed by the court sufficient, may himself be sworn as a witnesss in such cause. Either party may give notice to adverse party to be sworn as a witness, &c.

SEC. 58. If the party receiving such notice shall live more than thirty miles from the place of trial, or shall be about to go out of the state, not to return in time for the trial, or is so sick, or infirm or aged, as to make it probable that he will not be able to attend at the trial, he may give notice of any such fact to the adverse party, and that his deposition will be taken before some justice of the peace therein named, and said notice shall be given, and the deposition taken according to the provisions of law for taking the depositions of other witnesses. The deposition thus taken and duly produced, shall he admitted as testimony on the trial. When party receiving notice may have his deposition taken, &c.

SEC. 59. If the party receiving the notice mentioned in the fifty-eighth section of this chapter shall not be a resident of this state, he may proceed to take out a commission for obtaining his testimony, in the same manner that commissions are taken out for obtaining the testimony of foreign witnesses, according to the rules and practice of the courts. A deposition properly taken under this section, produced at the trial, shall be admitted as testimony. If a non-resident of state, same may be taken on a commission.

SEC. 60. A party examined by an adverse party, as in this chapter provided, may be examined, on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, such adverse party may offer himself as a witness on his own behalf, in respect to the new matter, and shall be so received. May be examined on his own behalf. When adverse party may be sworn as a witness.

Of the Exemplification of Justices' Judgments in other States.

SEC. 61. An exemplification of a judgment rendered by any justice of the peace in any state or territory of the United States, of- Judgments in justices' courts, how proved.

ficially certified by such justice as a full and correct copy of all the proceedings in that case from his docket, with a certificate of magistracy thereon, signed and authenticated by a clerk of a court of record in the county where such judgment was rendered, with the seal thereof attached, shall be good and legal evidence in any court or legal proceedings in this state, to prove the facts contained in such exemplification.

Of Documentary Evidence and the preservation thereof, &c.

Proof of publication of certain notices, how made, and when and where filed.

SEC. 62. When notice of any application to any court or judicial officer for any proceeding authorized by law, is required to be published in one or more newspapers, an affidavit of the printer of such newspaper, or of his foreman or principal clerk, annexed to a printed copy of such notice, taken from the paper in which it was published, and specifying the time when and the paper in which such notice was published, may be filed with the proper officer of the court, or with the judicial officer before whom such proceeding shall be pending, at any time within six months after the last day of the publication of such notice, unless sooner specially required.

Same of notice of sale of real property.

SEC. 63. When any notice of a sale of real property is required by law to be published in any newspaper, an affidavit of the printer of such newspaper, or of his foreman or principal clerk, annexed to a printed copy of such notice, taken from the paper in which it was published, and specifying the times when and the paper in which such notice was published, may be filed at any time within six months after the last day of such publication, with the register of deeds of the county in which the premises sold are situated.

The affidavits filed and copies thereof, to be evidence.

SEC. 64. The original affidavit so filed pursuant to the two last preceding sections, and copies thereof, duly certified by the officer in whose custody the same shall be, shall be presumptive evidence in all cases, and in every court or judicial proceeding, of the facts contained in such affidavit.

Affidavit of printer, &c.. of publication to be evidence.

SEC. 65 The affidavit of the printer or foreman of such printer of any public newspaper published in this state, of the publication of any notice or advertisement which by any law of this state shall be required to be published in such newspaper, shall be entitled to be read in evidence in all courts of justice in this state, and in all proceedings before any officer, body or board, and shall be prima facie evidence of such publication and of the facts stated therein.

How copy of papers, records, &c., to be certified in order to be evidence.

SEC. 66. Whenever a certified copy of any affidavit, record, document or other paper, is allowed by law to be evidence, such copy shall be certified by the officer in whose custody the same is required by law to be, to have been compared by him with the original, and to be a correct transcript therefrom; and if such officer have any official seal by law, such certificate shall be authenticated by such seal.

When seal not required.

SEC. 67. But the preceding section shall not be construed to require the affixing of the seal of a court to any certified copy of a rule or order made by such court, or of any paper filed therein, when such copy is used in the same court, or before any officer thereof.

Certain written instruments may be ackowledged and read in evidence.

SEC. 68. Every written instrument, except promissory notes and bills of exchange, and except the last wills of deceased persons, may be proved or acknowledged in the manner now provided by law for taking the proof or acknowledgment of conveyances of real estate, and the certificate of the proper officer indorsed thereon, shall entitle such instrument to be read in evidence in all courts of justice, and in all proceedings before any officer, body or board, with the same effect, and in the same manner as if such instrument were a conveyance of real estate.

Register of deeds and clerk of court to receive and deposite papers, &c.

SEC. 69. The register of deeds and the clerk of any court of record in every county in this state, upon being paid the fees allowed therefor by law, shall receive and deposit in their offices respectively, any instruments or papers which any person shall offer to them for that purpose, and if required, shall give to such person a written receipt therefor.

How to be indorsed, filed and kept.

SEC. 70. Such instruments or papers shall be properly indorsed, so as to indicate their general nature, and the names of the parties thereto, shall be filed by the officer receiving the same, stating the time when received, and shall be deposited and kept by him and his successors in office, in the same manner as his official papers, in some place separate and distinct from such papers.

How withdrawn, &c.

SEC. 71. The instruments or papers so received and deposited shall not be withdrawn from such office, except on the order of some court for the purpose of being read in evidence in such court, and then to be returned to such office; nor shall they be delivered without such order to any person, unless upon the written order of the person who deposited the same, or his executors or administrators.

Open to examination.

SEC. 72. Such instruments or papers so deposited, shall be open to the examination of any person desiring the same, upon the payment of the fees allowed by law.

When certificate of officer to be evidence of loss of document, &c., filed in his office.

SEC. 73. Whenever any officer to whom the legal custody of any document, instrument or paper shall belong, shall certify under his official seal, that he has made diligent examination in his office for such paper, instrument or document, and that it cannot be found, such certificate shall be presumptive evidence of the facts so certified in all causes, matters and proceedings, in the same manner and with the like effect as if such officer had personally testified to the same in the court or before the officer before whom such cause, matter or proceeding may be pending.

Of the Privilege of Witnesses in Certain Cases.

When witness not to be excused from answering question.

SEC. 74. Any competent witness in a cause, shall not be excused from answering a question relevant to the matter in issue, on the ground merely that the answer to such question may establish or tend to establish, that such witness owes a debt, or is otherwise subject to a civil suit. But this provision shall not be construed to require a witness to give any answer which will have a tendency to accuse himself of any crime or misdemeanor, or to expose him to any penalty or forfeiture, nor in any respect to vary or alter any other rule respecting the examination of witnesses.

When shall be.

When physician not compelled to disclose as a witness.

SEC. 75. No person duly authorized to practice physic or surgery, shall be compelled to disclose any information which he may have acquired in attending any patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon.

Of the Loss of Instruments, and Proceedings thereon.

Proof of loss of instrument how rebutted.

SEC. 76. Whenever a party to any action shall have been permitted to prove by his own oath the loss of any instrument, in order to admit other proof of the contents thereof, the adverse party may also be examined by the court on oath, to disprove such loss, and to account for such instrument.

Party may recover on lost note, &c.

SEC. 77. In any suit founded upon any negotiable promissory note or bill of exchange, or in which such note, if produced, might be allowed as a set-off in the defence of any suit, if it appear on the trial that such note or bill was lost, while it belonged to the party claiming the amount due thereon, parol or other evidence of the contents thereof may be given on such trial, and notwithstanding such note or bill was negotiable, such party shall be entitled to recover the amount due thereon, as if such note or bill had been produced.

To execute bond to adverse party.

SEC. 78. But to entitle a party to such recovery, he shall execute a bond to the adverse party in a penalty at least double the amount of such note or bill, with two sureties, to be approved by the court in which the trial shall be had, conditioned to indemnify the adverse party, his heirs and personal representatives, against all claims by any other person on account of such note or bill, and against all costs and expenses by reason of such claim.

Of Certain Testimony Relative to Corporations.

When admissions of members of corporation not evidence.

SEC. 79. In suits by or against an aggregate corporation, the admission of any member thereof, not named on the record as a party to such suit, shall not be received as evidence against such corporation, unless such admission was made concerning some transaction in which such member was the authorized agent of such corporation.

When member of corporation may testify.

SEC. 80. Any member of a corporation aggregate, not named on the record as a party to a suit brought by or against such corporation, shall be received as a competent witness to testify to any matter against the interest of such corporation.

Of Account Books, Instruments, and Justices' Dockets as Evidence.

Account books evidence.

SEC. 81. Whenever a party in any cause or proceeding, shall produce at the trial his account books, and swear that the same are his account books kept for that purpose; that they contain the original entries of charges for goods or other articles delivered, or work and labor, or other services performed, or materials found, and that such entries are just to the best of his knowledge and belief; that said entries are in his own hand writing, and that they were made at or about the time said goods or other articles were delivered, said work and labor or other services were performed, or said materials were found, the party offering such book or books as evidence, being subject to all the rules of cross examination by the adverse party that would be applicable by the rules to any other witness giving testimony relating to said book or books; if it shall appear upon the examination of said party, that all of the interrogatories in this section contained are satisfactorily established in the affirmative, then the said book or books shall be received as prima facie evidence in proof of the charges therein contained.

When to be verified by oath of agent, &c.

SEC. 82. Whenever the original entries mentioned in the preceding section, are in the hand writing of an agent, servant, or clerk of the party, the oath of such agent, servant, or clerk may in like manner be admitted to verify the same; and said books shall be testimony in the same manner as the books mentioned in the preceding section: Provided, that such books, mentioned in this and the preceding section, shall not be admitted as testimony of any item of money delivered at one time, exceeding five dollars, or of money paid to third persons, or of charges for rent.

When leger produced.

SEC. 83. Where a book has marks, which show that the items have been transferred to a leger, the book shall not be testimony unless the leger be produced.

Entries by deceased persons.

SEC. 84. Any entries made in a book by a person authorized to make the same, he being dead, may be received as evidence in a case proper for the admission of such book as evidence.

Instrument purporting to have been signed to be evidence.

SEC. 85. Every written instrument, purporting to have been signed or executed by any person, shall be proof that it was so signed or executed, until the person by whom it purports to have been signed or executed, shall deny the signature or execution of the same by his oath or affidavit; but this section shall not extend to instruments purporting to have been signed or executed by any person who shall have died previous to the requirement of such proof.

Justice's docket, or transcript thereof to be evidence before him.

SEC. 86. Whenever it shall become necessary in an action before a justice of the peace, to give evidence of a judgment, or other proceedings had before him, the docket of such judgment, or other proceeding, or a transcript thereof, certified by him, shall be good evidence thereof before such justice.

Transcript from justice's docket to be evidence in same county.

SEC. 87. A transcript from the docket of any justice of the peace, of any judgment had before him; of the proceedings in the cause previous to such judgment; of the execution issued thereon, if any, and of the return to such execution, if any, when certified by such justice, shall be evidence to prove the facts contained in such transcript in any court in the county where such judgment was rendered.

Clerk's certificate attached, necessary when used in different county.

SEC. 88. To entitle such transcript to be read in evidence in a different county than that in which the judgment was rendered or the proceedings originated, there shall be attached thereto, or indorsed thereon, a certificate of the clerk of the circuit court of the same county in which such justice resides, under the seal of said court, specifying that the person subscribing such transcript was, at the date of the judgment therein mentioned, a justice of the peace of such county.

What proceedings before justice, &c., may be proved by his oath, &c.

SEC. 89. The proceedings in any cause, had before a justice, not reduced to writing by said justice, nor being the contents of any paper or document produced before said justice, unless such paper or document should be lost or destroyed, may be proved by the oath of the justice. In case of his death or absence, they may be proved by producing the original minutes of such proceedings, entered in a book kept by such justice, accompanied by proof of his hand writing; or they may be proved by producing copies of such minutes, sworn to by a competent witness, as having been compared by him with the original entries, with proof that such entries were in the hand writing of the justice.

Of the Effect of certain Allegations in Pleadings.

When allegation in pleading that plaintiffs or defendants were partners, &c., shall be taken to be true.

SEC. 90. Whenever in any action, the plaintiffs in their declaration, or the defendants in their plea or notice, allege that the plaintiffs, or defendants, or third persons were partners at any particular time; or that as such partners they used any particular partnership name or style under which business was done, such averments shall be taken to be true, unless expressly denied by the affidavit of the opposite party, or some one in his behalf, within the usual time of pleading.

When proof of joint liability of defendants on contract not necessary.

SEC. 91. On actions against two or more defendants upon contracts in writing, alledged to have been executed by such defendants, as partners, or otherwise, proof of the joint liability of the defendants shall not be required to entitle the plaintiff to judgment, unless such proof shall be rendered necessary by pleading in abatement, or the filing of pleas denying the execution of such writing, verified by affidavit.

Miscellaneous Provisions.

Possession of note, &c., to be evidence of indorsement by indorsees.

SEC. 92. In all actions brought on promissory notes, or bills of exchange by the indorsee, the possession of the note shall be prima facie evidence that the same was indorsed by the persons by whom it purports to be indorsed.

Notices may be given by or to agents or attorneys.

SEC. 93. All notices required by this chapter to be given to or by an adverse party, may be given by or to the agent or attorney of the said party.

Depositions to be used before justices, how taken out of state.

SEC. 94. The depositions of persons out of this state, to be used in cases before justices of the peace, within this State, may be taken in the same manner, and under the same regulations, as depositions are now authorized by law to be taken of persons within this State, and shall be subject to the same exceptions; Provided, that in no case shall more than forty days' notice of the taking of such depositions be required to be given to the adverse party.

Register's and receiver's certificates to be evidence, &c.

SEC. 95. The receiver's receipt or certificate of purchase of public lands, signed by the receiver, and the official certificate of any register or receiver of the entry or purchase of any tract or tracts of land, or of the location of any tract or tracts by a military land warrant, shall be prima facie evidence in any court in this state, that the title of the lands mentioned or described in said receipt or certificate, is in the person or persons named therein, his, her, or their heirs or assigns, but the said certificate shall not be construed to apply to cases in which the land was held, owned or occupied, by any person or persons, as mineral ground, at the time of said entry, and on which discoveries of lead or copper ore had been made: Provided, the same shall be held by the original claimant, or his legal or equitable assignee.

Recorded deeds, &c., of lands in state, if acknowleged without state, to be evidence.

Sec. 96. All deeds, mortgages, or other instruments in writing, relating to real estate, situate within this state, which shall have been recorded in the office of any register of deeds before this section shall take effect, purporting to have been acknowledged or proved without this state, and having upon them substantially the ordinary form of a certificate of acknowledgment or proof, purporting to have been signed by some officer in another state or country, shall be deemed prima facie in all legal proceedings to have been acknowledged or proved, (as the case may be,) before the proper officer, and in conformity with the laws of such state or country where it purports to have been acknowledged or proved; and the records of all such deeds, mortgages, and instruments, certificate of acknowledgment or proof may be read in evidence, in like manner and with the same effect as the originals.

CHAPTER 99.

OF ADMINISTERING OATHS.

Before whom oaths may be taken.

Section 1. Whenever any oath or affidavit is or may be required or authorized by law, (except oaths to jurors and witnesses in the trial of a cause, and such other oaths as are required by law to be taken before particular officers,) the same may be taken before any judge, judge of probate, court commissioner, clerk of any court of record, notary public, or justice of the peace, and when certified by any such officer to have been taken before him, may be read and used in any court of law or of equity, of record or not of record, within this state, and before any officer, judicial, executive, or administrative.

When persons may affirm.

Sec. 2. Every person who shall declare that he has conscientious scruples against taking any oath, or swearing in any form, shall be permitted to make his solemn declaration or affirmation.

When court may adopt other than the usual mode of swearing.

Sec. 3. Whenever the court before which any person shall be offered as a witness shall be satisfied that such person has any peculiar mode of swearing, which is more solemn and obligatory, in the opinion of such person, than the usual mode, the court may, in its discretion, adopt such mode of swearing such person.

Ib.

Sec. 4. Every person believing in any other than the Christian religion, shall be sworn according to the peculiar ceremonies of his religion, if there be any such ceremonies.

Court may examine infants, &c., to ascertain

Sec. 5. The court before whom an infant, or a person apparently of weak intellect, shall be produced as a witness, may ex-their capacity, &c.

amine such person to ascertain his capacity, and whether he understands the nature and obligations of an oath; and any court may inquire of any person what are the peculiar ceremonies observed by him in swearing, which he deems most obligatory.

Oaths may be taken in any of the usual forms, and force of same.

SEC. 6. In all cases in which an oath or affidavit is required or authorized by law, the same may be taken in any of the usual forms, and every person swearing, affirming or declaring, in any such form, shall be deemed to have been lawfully sworn, and to be guilty of perjury for corruptly or falsely swearing, affirming or declaring in any such form.

CHAPTER 100.

OF AMENDMENTS AND PROCEEDINGS THEREUPON.

When court may amend process, pleadings, &c.

SECTION 1. The court in which any action shall be pending shall have power to amend any process, pleading or proceeding in such action, either in form or substance, for the furtherance of justice, on such terms as shall be just, at any time before judgment rendered therein.

When party allowed to answer.

SEC. 2. If such amendment be made to any pleading in matter of substance, the adverse party shall be allowed an opportunity, according to the course and practice of the court, to answer the pleading so amended.

Process not to be amended as to the return day.

SEC. 3. Process by which any action shall have been commenced, and on which any defendant shall have been arrested, shall not be amended as to the return day thereof.

Defects in form may be amended after judgment.

SEC. 4. After judgment rendered in any cause, any defects or imperfections in matter of form, contained in the record, pleadings, process, entries, returns or other proceedings in such cause, may be rectified and amended by the court in affirmance of the judgment, so that such judgment shall not be reversed or annulled; and any variance in the record from any process, pleading or proceeding had in such cause, shall be reformed and amended according to such original process, pleading or proceeding.

Same of officers' returns, &c., at any time.

SEC. 5. All returns made by any sheriff or other officer, or by any court or subordinate tribunal, to any court, may be amended in matter of form by the court to which such returns shall be made, in their discretion, as well before as after judgment.

Same of defect in award of venire.

SEC. 6. Any imperfection or defect in the award of any venire, or any omission to award such venire on the record, may be amended or supplied by the court in which such record is.

What imperfections not to affect cause after verdict, or judgment upon confession, &c.

SEC. 7. When a verdict shall have been rendered in any cause, the judgment thereon shall not be stayed, nor shall the judgment upon such verdict, or any judgment upon confession, default, nihil dicit or non sum informatus, be reversed, impaired, or in any way affected by reason of the following imperfections, omissions, defects, matters or things, or any of them, in the pleadings, process, proceedings or record, namely:

1. For want of any writ original or judicial:

2. For any default or defect in process, or for misconceiving any process, or awarding the same to a wrong officer, or for the want of any suggestion for awarding process, or for any insufficient suggestion:

3. For any imperfect or insufficient return of any sheriff or other officer, or that the name of such officer is not set to any return actually made by him:

4. For any variance between the original writ, bill, plaint and declaration, or between either of them:

5. For any mispleading, miscontinuance or discontinuance, insufficient pleading, lack of color, jeofail or misjoining of issue:

6. For the want of any warrant of attorney by either party, except in cases of judgment by confession, where such warrant is expressly required by law:

7. For any party, under twenty-one years of age, having appeared by attorney, if the verdict or judgment be for him:

8. For the want of any allegation or averment, on account of which omission a special demurrer could have been maintained:

9. For omitting any allegation or averment of any matter, without proving which the jury ought not to have given such verdict:

10. For any mistake in the name of any party or person, or in any sum of money, or in the description of any property, or in reciting or stating any day, month or year, when the correct name, time, sum or description shall have been once rightly alleged in any of the pleadings or proceedings:

11. For mistake in the name of any juror or officer:

12. For the want of a right venue, if the cause was tried by a jury of the proper county:

13. For any informality in entering a judgment or making up the record thereof, or in any continuance or other entry upon such record:

14. For any other default or negligence of any clerk or officer of the court, or of the parties or their counsellors or attorneys, by which neither party shall have been prejudiced.

What omissions, &c., may be supplied by the court.

Sec. 8. The omissions, imperfections, defects and variances in the preceding section enumerated, and all other of the like nature, not being against the right and justice of the matter of the suit, and not altering the issue between the parties on the trial, shall be supplied and amended by the court where the judgment shall be given, or by the court into which such judgment shall be removed by writ of error.

Process, &c., not to be amended without order of the court.

Sec. 9. No process, pleading or record shall be amended or impaired by the clerk or other officer of any court, or by any other person, without the order of such court, or of some other court of competent authority.

To what actions the provisions of this chapter to extend.

Sec. 10. The provisions of this chapter shall extend to all actions in courts of law, and to all suits for the recovery of any debt due to this state, or for any debt, duty or revenue belonging to it; and also to all actions for penalties and forfeitures, to all writs of mandamus and prohibition, to all informations in the nature of a quo warranto, to writs of scire facias, and to the proceedings thereon.

Whenever a change shall happen in a suit, court may allow amendment.

SEC. 11. In all the cases mentioned in this title, when any change shall happen in a suit after its commencement, the court may allow such amendments of the declaration, and other pleadings, and such suggestions to be entered on the record, as circumstances may require.

If non-joinder of defendant is pleaded, when and how plaintiff may amend.

SEC. 12. When the defendant in any action founded on contract, shall plead in abatement the non-joinder of any other person or defendant, the court may, at any time before issue joined on such plea, allow the plaintiff on such terms as they shall prescribe, to amend his declaration by inserting therein the name of any other person or defendant, and declaring against him jointly with the original defendants.

New process to issue.

SEC. 13. The plaintiff may thereupon take out new process, which shall be served on the defendants according to law.

On return of same, defendants named therein bound to appear.

SEC. 14. Upon the return of said new process, every person named therein as a defendant shall be bound to appear and answer with the other defendants, in the same manner as if they had all been originally made parties in the first process.

If service can not be made, how action still to continue.

SEC. 15. If a legal service cannot be made on any such new defendant, by reason of his absence from the state, or for other sufficient cause, the action may nevertheless proceed against all the defendants who are duly served with process, in like manner as is provided in this chapter, when one of several original defendants is not duly served with process.

Judgment, how to be rendered and execution issued.

SEC. 16. Judgment shall be rendered and execution shall issue in every such case for either party, in the same manner as if the original process had been issued against all the defendants.

When part of defendants defaulted or confess, how plaintiff may amend his declaration, &c.

SEC. 17. When any action founded on contract is brought against several persons, and any of the defendants shall be defaulted, or shall confess the action, the plaintiff may amend his declaration, and take judgment against those defendants in like manner as if they had been sued alone, and the action may be discontinued against the other defendants, who shall be entitled to costs against the plaintiff, as in case of a nonsuit: Provided, that no such discontinuance and amendment shall be allowed without notice to the defendants who have been defaulted, that they may appear and object thereto if they shall see fit.

When and on what terms plaintiff may discontinue as to part of defendants; to amend declaration, &c.

SEC. 18. When any action founded on contract is brought against several persons, the plaintiff may be allowed at any time before the cause is argued to the jury, and if there is no such argument, at any time before it is committed to the jury, by the court, to discontinue as against any of the defendants, upon payment of costs to them, as in case of a non-suit, and on such other terms as the court shall direct; and the plaintiff may thereupon amend his declaration, and proceed against the other defendants in like manner as if the action had been originally brought against them alone; and the defendants against whom the cause has been discontinued, may be thereupon examined as witnesses for either party, if in other respects competent.

Such defendants may be witnesses.

When circumstantial mistakes, and errors of form, not to vitiate.

SEC. 19. No declaration, writ, process or other proceedings in the courts or course of justice, shall be abated, arrested, quashed or reversed for any circumstantial errors or mistakes, when the person and case may be rightly understood by the court, nor through defect or want of form only.

CHAPTER 101.

OF DEFAULT, AND OF THE ASSESSMENT OF DAMAGES.

When defendant's default to be entered, &c.

SECTION 1. When any defendant being duly served with process, shall fail to appear, his default shall be recorded, and the charge in the declaration shall be taken to be true, and judgment shall be rendered accordingly.

When and how default may be taken off.

SEC. 2. If after such default at the first term, the defendant shall appear before the jury is dismissed, the court may take off the default, and allow the appearance to be entered upon the defendant's pleading issuably, and paying the plaintiff's costs up to that time.

Of the Assessment of Damages.

When clerk may assess damages.

SEC. 3. In every suit brought in a court of record, where any written obligation or contract shall be set forth in the declaration as the cause of action, if interlocutory judgment be rendered for the plaintiff by default, or upon demurrer, or upon confession, the court shall direct the clerk thereof to examine, ascertain and report what sum the plaintiff ought to recover for his damages.

Obligations or contracts on which assessments may be made.

SEC. 4. The obligations or contracts upon which assessments may be made, must be in writing, and must be, either,

1. A bill of exchange, promissory note, order or draft for the payment of money: or,
2. Some contract for the absolute payment of money only: or,
3. Some contract for the payment of a sum certain, though payable in specific articles: or,
4. Some contract for the delivery of specific articles at a value or price stipulated in the same contract.

Assessment on notes, &c., when copy filed.

SEC. 5. In all actions on promissory notes or bills of exchange, where the plaintiff shall file a copy of such promissory note or bill of exchange with the declaration, the damages may be assessed as though the said note or bill of exchange had been set out specially in said declaration.

Production of note, &c., to clerk, sufficient evidence.

SEC. 6. In assessing any damages mentioned in the preceding sections of this chapter, the production to the clerk of the bill of exchange, promissory note, or contract specially set forth in the declaration, or of which a copy was filed, shall be sufficient evidence of the execution of the same without any other proof; and such assessment shall be made, notwithstanding there may be general or other counts in the declaration, besides those in which the note, bill or contract shall be specially set forth.

Assessment to be made, tho' there are general counts.

Clerk may administer oaths, &c., and if instrument lost,

SEC. 7. Any clerk authorized to assess damages by the provisions of this chapter, may administer oaths to witnesses, and take their testimony whenever it may be necessary. If the instrument

May take proof thereof.

declared on be lost, the clerk may take proof thereof, and of the contents of such instrument, which proof shall be stated in his report; and whenever required by either party, he shall reduce to writing the testimony taken by him, and include the same in his report.

To report amount due to court and certify same on bill, &c.

SEC. 8. The clerk shall report to the court the sum ascertained by him to be due to the plaintiff, and shall certify under his hand, upon such original bill, note or contract, the amount of damages assessed thereon.

Proceedings upon report.

SEC. 9. Either party may except to such report, and on such exception being made, the court shall hear and examine the matter, and cause justice to be done between the parties; and shall give judgment for the sum reported, or for such sum as the court, upon hearing the exception, if any, shall have ascertained to be due to the plaintiff.

Judgment how entered.

SEC. 10. The judgment so rendered shall be entered on the record, without stating any reference to the clerk, or any proceeding in consequence thereof, and the damages shall be stated as having been assessed by the court.

CHAPTER 102.

OF JUDGMENTS AND EXECUTIONS, OF THE EXEMPTION OF PROPERTY THEREFROM AND THE SALE THEREON, AND OF THE REDEMPTION OF LANDS, &C.

Of Judgments.

Party obtaining judgment to make out judgment record.

SECTION 1. Whenever a party shall obtain a judgment in a court of record, he, his agent or attorney, shall make out a judgment record thereof, which shall be filed with the clerk of the court in which the same was obtained.

Of what judgment to consist and to be signed.

SEC. 2. Such judgment record shall consist of all the pleadings in the cause, the verdict, if there was any, and the final judgment of the court, and shall be signed, either by a judge of the circuit court or court commissioner.

Plaintiff not to be non-suited after verdict.

SEC. 3. When a verdict shall have been rendered in any action, the plaintiff shall not thereafter be non-suited, but judgment shall be rendered upon the matter found by such verdict.

When judgment not to be set aside on motion.

SEC. 4. No judgment, in any court of record, shall be set aside for irregularity, on motion, unless such motion be made within one year after the time such judgment was rendered.

To be a charge upon lands, &c.

SEC. 5. All judgments hereafter rendered, in any court of record, shall bind, and be a charge upon the lands, tenements, real estate and chattels real, in every county where the record, or a certified transcript thereof shall be filed, of every person against whom any such judgment shall be rendered, which such person may have in such counties, at the time of docketing such judgments, or which such person shall acquire at any time thereafter; and such estate and chattels real shall be subject to be sold upon execution, to be issued on such judgment.

Writ of error not to affect lien of judgment.

Sec. 6. When a writ of error shall be prosecuted from any judgment of the circuit court to the supreme court, it shall not affect the lien, but the lien shall continue and bind the real estate of the person or persons against whom such judgment is rendered, the same as if said error had never been prosecuted; unless such judgment shall be reversed by the supreme court, and the plaintiff in error on the trial anew shall be the successful and prevailing party.

Lien to cease after ten years.

Sec. 7. From and after ten years from the time of docketing every such judgment, it shall cease to bind or be a charge upon any such property, as against purchasers in good faith, and as against incumbrances subsequent to such judgment, by mortgage, judgment, decree or otherwise.

What time not reckoned part of ten years.

Sec. 8. The time during which the party recovering such judgment shall be restrained from proceeding thereon, by any injunction of any court, or by the operation of any writ of error, shall not constitute any part of the ten years in the last section specified; but to entitle any party to such deduction, he shall, within ten years from the docketing of the judgment, file with each clerk of the court in which such judgment record, or a transcript thereof, was filed, a notice, specifying the injunction or writ of error, by which proceedings on such judgment shall have been restrained, and the time of service thereof; and if such restraint shall have ceased, such party shall specify the duration thereof.

What clerk to enter on the docket.

Sec. 9. The clerk with whom such notice shall be filed shall enter in the margin of the docket of such judgment, a minute stating that an injunction or writ of error, as the case may be, has been issued relating to such judgment.

Judgment docketed within one year after death of party not to bind real estate.

Sec. 10. In all cases in which a record of judgment shall be filed and docketed within one year after the death of the party against whom such judgment was obtained, a suggestion of such death, if it happened before judgment rendered, shall be entered on the record, and if after judgment rendered, the fact shall be certified on the back of such record by the attorney filing the same; such judgment shall not bind the real estate which such party shall have had at the time of his death, but shall be considered as a debt to be paid in the usual course of administration.

If verdict rendered and party die, &c, when court may authorize judgment to be docketed.

Sec. 11. If a verdict has been rendered before the death of such party upon which proceedings shall be stayed by bill of exceptions, or by any order of the court or any officer thereof, the court may authorize the filing and docketing a record of judgment within one year after the death of such party, subject to the power of the court to vacate the same.

Time of signing judgment stated.

Sec. 12. The day and year of signing any record of judgment shall be stated in the margin thereof by the judge or other officer signing the same.

Judgment entered on plea of confession, &c.

Sec. 13. Judgments may be entered in the supreme court or in any court of record in vacation, or in term upon a plea of confession signed by an attorney of such court, although there be no suit then pending between the parties, if the following provisions be complied with, and not otherwise:

1. The authority for confessing such judgment shall be in some proper instrument, distinct from that containing the bond, contract, or other evidence of the demand for which judgment is confessed:

2. Such authority shall be produced to the officer signing such judgment, and shall be filed with the clerk of the court in which the judgment shall be entered, at the time of the filing and docketing such judgment.

Clerk to mark on judgment record time of filing, &c.

SEC. 14. The clerk of every court of record shall mark upon the back of every record of judgment filed in his office, the time of filing the same; no judgment shall be deemed valid so as to authorise any proceeding thereon, until the record thereof shall have been signed and filed.

Judgment not to affect lands, &c., until filed and docketed.

SEC. 15. No judgment shall affect any lands, tenements, real estate or chattels real, or have any preference as against other judgment creditors, purchasers or mortgagees, until the record thereof be filed and docketed as herein directed.

What entries respecting judgments clerk to make in books.

SEC. 16. At the time of filing a record of judgment, the clerk shall enter in an alphabetical docket, in books to be provided and kept by him, a statement of such judgment, containing,

1. The names at length of all the parties to such judgment, designating particularly those against whom it is rendered, with their places of abode, titles, trades or professions, if any such are stated in such record:

2. The amount of the debt, damages or other sum of money recovered, with the costs:

3. The hour and day of entering such docket:

4. If the judgment be against several persons, such statement shall be repeated under the name of each person against whom the judgment was recovered in the alphabetical order of their names respectively.

Books open to search.

SEC. 17. The books in which dockets of judgments shall be entered, shall, during the usual hours of transacting business, be open to the search and examination of all persons desiring the same.

Penalty on clerk for neglect to docket judgment.

SEC. 18. Every clerk who shall neglect to docket any judgment as soon as practicable, shall forfeit to the party aggrieved, two hundred and fifty dollars, in addition to all damages which such party may have sustained by such omission or neglect.

Recognizance not to bind lands.

SEC. 19. No recognizance taken by any court or by any officer, shall bind any lands, tenements or real estate or other property; but such recognizances shall be deemed to be mere evidences of debt.

Docket of judgment, how discharged.

SEC. 20. The docket of a judgment rendered in any court of record, may be cancelled and discharged by the clerk thereof, upon filing with him an acknowledgment of satisfaction, signed by the party in whose favor such judgment was obtained, or by his executors or administrators, duly authenticated as hereinafter directed.

Ib.

SEC. 21. Such acknowledgment shall be made before some judge of the court in which the judgment was rendered, or before some judge of the circuit court or court commissioner, who shall certify that the party making the same was known or was made known to such officer by competent proof.

Ib

SEC. 22. Such acknowledgment may also be made by the attorney on record, of the party in whose favor the same was rendered, within two years after the filing of the record of such judgment, in the same manner, and with the like effect, as if made by such party himself; but such satisfaction shall not be conclusive against the party in whose favor the judgment was rendered, in respect to any person to whom actual notice of the revocation of the authority of such attorney shall have been given, before any payment on such judgment shall have been made, or before any purchase of property bound by such judgment shall have been effected.

How satisfaction of judgment acknowledged.

SEC. 23. When payment of the judgment is made, satisfaction thereof shall be acknowledged by the attorney or plaintiff receiving the amount, on payment of the fees by the defendant, or satisfaction may be entered on the docket of judgment in the clerk's office, without acknowledgment.

Judgment satisfied to amount returned on execution; duty of clerk thereon.

SEC. 24. When an execution issued upon any judgment shall be returned satisfied, in whole or in part, such judgment shall be deemed satisfied to the extent of the amount so returned, as having been collected on such execution, unless such return be vacated by the court; and upon any execution being so returned, the clerk of the court shall enter in the docket of such judgment the fact that the amount stated in such return to have been levied, has been collected.

Clerk to give transcript of judgment record.

SEC. 25. It shall be the duty of the clerk to give a certified transcript of any judgment record in his office, when the same shall be demanded and the legal fees tendered.

Of Executions and Proceedings thereon.

Party to have execution within two years.

SEC. 26. Whenever judgment shall be rendered in any court of record for any debt, damages, sum of money or costs, the party in whose favor such judgment was rendered, upon filing the record thereof, and within two years thereafter, may have execution to the sheriff or other proper officer, to collect the amount of such judgment.

How execution to issue after two years.

SEC. 27. Upon any judgment or decree on which no execution shall have been issued within two years from the time of its rendition, or which it may by law be necessary to revive for any debt, damage, sum of money or costs, the party in whose favor such judgment or decree was rendered, or entered, may have execution to the sheriff or other proper officer, to collect the amount due on such judgment or decree, upon application to the proper court, accompanied by an affidavit of the party, his agent or attorney, setting forth the amount due on such judgment or decree, and that the same is unsatisfied; and the said court, upon being satisfied that there is any sum due thereon, shall direct the clerk to issue execution therefor: Provided, it shall appear to said court that a written notice of such application has been served upon the opposite party, his agent or attorney, at least twenty days before the term of the court at which such application shall be made, or that a copy of such notice has been posted up in some conspicuous place in the office of the clerk of the circuit court, when such opposite party shall not reside in the county where such judgment shall have been rendered, or shall not have any agent or attorney residing in said county known to the party giving such notice.

Against what execution to issue.

SEC. 28. Such execution may be, either,

1. Against the goods and chattels, lands, tenements, and chattels real of the party against whom such judgment was recovered:

2. Against the body of such party, in cases where executions against the body are allowed by law.

When execution not to issue against body, or executors, &c.

SEC. 29. But such execution shall not issue against the body, nor against the proper goods and chattels, lands and tenements of any executor, administrator, heir, devisee or legatee, unless in those cases specially provided by law.

When to issue against body where bail was taken on arrest.

SEC. 30. In those cases in which bail shall have been taken on the arrest of a defendant, and the bail bond shall have been assigned to the plaintiff, no execution shall issue against the body of the defendant in such action, until an execution against the goods and chattels, lands and tenements of such defendant shall have been issued to the sheriff of the county in which such defendant was arrested, and shall have been returned unsatisfied in whole or in part.

If defendant imprisoned execution may issue first against his body.

SEC. 31. But if the defendant be imprisoned on execution in another cause, or upon process in the same action, or shall have been surrendered in exoneration of his bail in such action, an execution may issue against his body in those cases allowed by law, without any previous execution against his property.

Executions may issue to sheriffs of different counties, &c.

SEC. 32. Executions, either against the body in cases allowed by law, or against the property of any party, may be issued at the same time to sheriffs of different counties, but no execution against the body of any party shall issue while there is an execution against his property not returned, nor shall an execution against the property of any party issue while there is an execution against his body unreturned, unless by order of the court.

When body taken on execution, no other to issue.

SEC. 33. When the body of a party shall have been taken on an execution issued for that purpose, no other execution can be issued against him or his property, except in cases specially provided by law.

Proceedings in case of escape.

SEC. 34. But if any person, who shall have been taken on an execution, shall escape, he may be retaken by a new execution against his body, or an execution against his property may be issued in the same manner as if the body of such prisoner had never been taken in execution.

Person arrested on execution to be kept in custody.

SEC. 35. Whenever any person shall be arrested by virtue of an execution, issued upon any judgment rendered in a court of record, he shall be safely kept in secure custody in the manner prescribed by law.

Same of person surrendered by bail.

SEC. 36. Every person surrendered in exoneration of his bail, shall be kept in like manner until he shall satisfy the judgment rendered against him, or be discharged according to law.

When officer may require bond of indemnity.

SEC. 37. If in any case where an officer has an execution against property, there is any reasonable doubt as to the ownership of the property, or as to its liability to be taken on the execution, the officer may require sufficient security to indemnify him for levying upon such property.

If process served on part of joint debtors, judgment to be rendered against all.

SEC. 38. In actions against two or more persons jointly indebted upon any joint obligation, contract or liability, if the process issued against all the defendants shall have been duly served upon either of them, the defendant so served shall answer to the plaintiff; and in such case, the judgment, if rendered in favor of the plaintiff, shall be against all the defendants, in the same manner as if all had been served with process.

Force and effect of such judgment.

SEC. 39. Such judgment shall be conclusive evidence of the liability of the defendant who was personally served with process in the suit, or who appeared therein, but against every other defendant, it shall be evidence only of the extent of the plaintiff's demand, after the liability of such defendant shall have been established by other evidence.

How execution to issue thereon.

SEC. 40. Execution upon every such judgment as in the last section mentioned, shall be issued in form against all the defendants, but the attorney issuing the same shall indorse thereon the names of such of the defendants as were not served with the process by which the action was commenced, and shall direct such execution to be served as provided in the next section.

Execution, how served and collected.

SEC. 41. Such execution shall not be served upon the person of any defendant whose name is so indorsed thereon, nor shall it be levied upon the sole property of such defendant, but it may be collected of the personal property of any such defendant, owned by him as a partner with the other defendants taken, or with any of them.

Interest, when to be collected.

SEC. 42. Whenever a judgment shall be rendered upon contract, or upon any prior judgment, and execution shall be issued thereon, it shall be lawful to direct upon such execution the collection of interest on the amount recovered, from the time of recovering the same until such amount be paid.

Sheriff to indorse time he received execution.

SEC. 43. Upon the receipt of any execution, it shall be the duty of the sheriff or other officer to indorse thereon the year, month, day and hour of the day when he received the same.

To whom and how execution against sheriff may be directed.

SEC. 44. In all cases where judgment shall be obtained in any court against the sheriff of any county, either singly or with others, instead of directing the execution thereon to the coroner of the county, it may be directed and delivered to any person, (except a party in interest in the suit,) who shall be designated by the court in term by an order to be entered in the minutes, or by any judge thereof in vacation, by an order to be endorsed on such execution.

Person receiving execution to be deemed coroner, &c.

SEC. 45. The person so designated and receiving such execution to execute the same, shall, in respect to such execution, be deemed a coroner of the county, and shall be liable in all respects to all the provisions of law respecting sheriffs, so far as the same may be applicable.

When personal property bound.

SEC. 46. Personal property shall be bound from the time it is seized in execution.

Coin levied on need not be sold.

SEC. 47. Upon executions against the property of a defendant, the officer shall levy upon any current gold or silver coin belonging to such defendant, and shall pay and return the same as so much money collected, without exposing the same for sale at auction.

Bank bills may be levied and sold.

SEC. 48. Upon such execution, the officer may levy upon and sell any bills or other evidences of debts issued by any moneyed corporation, or by the government of the United States, and circulated as money, which shall belong to the defendant in such execution.

When property pledged, right of pledgor may be sold.

SEC. 49. When goods and chattels shall be pledged for the payment of money, or the performance of any contract or agreement, the right and interest in such goods of the person making such pledge may be sold on execution against him, and the purchaser shall acquire all the right and interest of the defendant, and shall be entitled to the possession of such goods and chattels on complying with the terms and conditions of the pledge.

Notice of sale on execution, how given.

SEC. 50. No sale of any goods or chattels shall be made by virtue of any execution, unless previous notice of such sale shall have been given twenty days successively, by fastening up written or printed notices thereof in three public places of the town where such sale is to be had, specifying the time and place where the same is intended to be had.

Of the Exemption of Property from Execution, &c.

What real estate not subject to sale on execution, &c.

SEC. 51. A homestead, consisting of any quantity of land not exceeding forty acres, used for agricultural purposes, and the dwelling house thereon and its appurtenances, to be selected by the owner thereof, and not included in any town plot, or city or village, or instead thereof, at the option of the owner, a quantity of land not exceeding in amount one-fourth of an acre, being within a recorded town plot, or city or village, and the dwelling house thereon and its appurtenances, owned and occupied by any resident of the state, shall not be subject to forced sale on execution, or any other final process from a court, for any debt or liability contracted after the first day of January, in the year one thousand eight hundred and forty-nine.

Qualification of preceding section; wife to sign deed and mortgage of such estate.

SEC. 52. Such exemption shall not affect any laborer's or mechanic's lien, or extend to any mortgage thereon lawfully obtained; but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same.

Proceedings when levy made before homestead is set apart.

SEC. 53. Whenever a levy shall be made upon the lands or tenements of a householder, whose homestead has not been selected and set apart by metes and bounds, such householder may notify the officer, at the time of making such levy, of what he regards as his homestead, with a description thereof, within the limits above prescribed, and the remainder alone shall be subject to sale under such levy.

Ib.

SEC. 54. If the plaintiff in execution shall be dissatisfied with the quantity of land selected and set apart as aforesaid, the officer making such levy shall cause the same to be surveyed, beginning at a point to be designated by the owner, and set-off in a compact form, including the dwelling house and its appurtenances, to the amount specified in the fifty-first section of this chapter; and the expenses of such survey shall be chargeable on the execution, and collected thereupon, if it shall appear after such survey that the owner of said land did not correctly state his metes and bounds; otherwise, the expenses of survey shall be borne by the person directing the same.

Officer may sell property levied upon and not in-

SEC. 55. After the survey shall have been made, the officer making the levy may sell the property levied upon and not included in the set-off, in the same manner as provided in other cases for the sale of real estate on execution; and in giving a deed of the same, he may describe it according to his original levy, excepting therefrom by metes and bounds, according to the certificates of survey, the quantity set-off as aforesaid.

cluded in set-off, &c.

Exemption of dwelling house on leased land.

SEC. 56. Any person owning and occupying any dwelling house on land not his own, which land he shall be rightfully in possession of, by lease or otherwise, and claiming such house as his homestead, shall be entitled to the exemption of such house.

Real estate not exempt from taxation and sale for taxes.

SEC. 57. Nothing in this chapter shall be considered as exempting any real estate from taxation, or sale for taxes.

What property exempt from attachment, and levy and sale on final process.

SEC. 58. No property hereinafter mentioned or represented, shall be liable to attachment, execution or sale, on any final process issued from any court of this state:

1. The family bible:

2. Family pictures, school books or library:

3. A seat or pew in any house or place of public worship:

4. The rites of burial of the dead:

5. All wearing apparel of the debtor and his family; all beds, bedsteads and bedding kept and used for the debtor and his family; all stoves and appendages put up or kept for the use of the debtor and his family; all cooking utensils, and all other household furniture not herein enumerated, not exceeding two hundred dollars in value:

6. Two cows, ten swine, one yoke of oxen and one horse, or in lieu of one yoke of oxen and a horse, a span of horses, ten sheep, and the wool from the same, either in the raw material, or manufactured into yarn or cloth, the necessary food for all the stock mentioned in this section for one year's support either provided or growing, or both, as the debtor may choose; also one wagon, cart or dray, one sleigh, one plough, one drag, and other farming utensils, including tackle for teams, not exceeding fifty dollars in value:

7. The provisions for the debtor and his family necessary for one year's support, either provided or growing, or both, and fuel necessary for one year:

8. The tools and implements, or stock in trade of any mechanic, miner or other person, used and kept for the purpose of carrying on his trade or business, not exceeding two hundred dollars in value; the library and implements of any professional man, not exceeding two hundred dollars in value; all of which articles hereinbefore intended to be exempt, shall be chosen by the debtor, his agent, servant, clerk, or legal representatives, as the case may be.

To be chosen by debtor or his legal representative.

Of Proceedings on Sale and Redemption, and Miscellaneous Provisions.

Personal property to be present on sale, and how sold.

SEC. 59. No personal property shall be exposed for sale, unless the same be present and within the view of those attending such sale. It shall be offered for sale in such lots and parcels as shall be calculated to bring the highest price.

Shares of stock, how levied upon or attached.

SEC. 60. Any share or interest of a stockholder in any bank, insurance company, or any other joint stock company that is or may be incorporated under the authority of this state, may be levied upon or attached, by leaving an attested copy of the writ, with the clerk, treasurer or cashier of the company, if there be any such officer, otherwise with any officer or person who has at the time the custody of the books and papers of the corporation.

How to be sold

SEC. 61. Any share or interest so levied upon or attached, with all the dividends that shall thereafter accrue thereon, shall be held and sold to satisfy the judgment in like manner as any other property levied on, is held and sold.

Person keeping record of shares to give officer certificate, &c.

SEC. 62. If the officer having an attachment or an execution against any such stockholder, shall exhibit the writ to the officer of the company who is appointed to keep a record or account of the shares or interest of the stockholders therein, and shall request a certificate of the number of shares or amount of the interest held by the defendant in such suit, such officer of the company shall give such certificate to the person holding the writ; and if he shall unreasonably refuse to do so, or if he wilfully give a false certificate thereof, he shall be liable for double the amount of all damages occasioned by such refusal or false certificate, to be recovered in an action on the case against him, unless the judgment is satisfied by the original defendant.

Penalty for neglect.

What executions authorising sale of real estate to command officer.

SEC. 63. Executions to authorize the sale of real estate shall command the officer to whom they are directed, that of the goods and chattels of the person against whom such execution shall issue, in the county of such officer, he shall cause to be made the debt, damages or other sum of money and costs for which the judgment was rendered, and if sufficient goods and chattels cannot be found, that then he cause the amount of such judgment to be made of the real estate of the person against whom such judgment was rendered, which such person shall have had at the time of docketing such judgment, specifying such time, or at any time afterwards, in whose hands soever the same may then be.

Ib., when issued against terre-tenant.

SEC. 64. If execution be issued on a judgment rendered against any person as terre-tenant, heir or devisee of any deceased person, it shall command the amount of such judgment to be made of the real estate whereof the ancestor, testator or person deceased, was seized at the time the same real estate became liable, or at any time afterwards, or at the time of the death of such ancestor, testator, or other deceased person, as the case may require, unless such heir, devisee, or terre-tenant, shall have made his own estate liable to such judgment.

Trust estates, how liable on execution.

SEC. 65. Lands, tenements and real estate holden by any one in trust or for the use of another, shall be liable to debts, judgments, decrees, executions and attachments against the person to whose use they are holden.

Execution suspended one year on death of defendant.

SEC. 66. If a party die after judgment rendered against him, but before execution issued thereon, the execution on such judgment shall not be suspended by reason of the non-age of any heir of such party; but no execution shall issue on any such judgment until one year after the death of the party against whom the same was rendered.

Party in custody dying new execution may issue.

SEC. 67. If any person taken in execution against his body shall die while so charged, new execution may be issued against the goods, chattels, lands and tenements of the deceased, in the same manner as if he had never been charged in execution.

SEC. 68. But such new execution shall not be levied upon any real estate which the deceased, after the judgment rendered against him, shall have sold in good faith.

On what real estate not to be levied.

SEC. 69. Nor shall such new execution be levied upon any real estate which shall have been actually sold under any other prior or subsequent judgment against the person so dying in execution.

Ib.

SEC. 70. When a judgment shall be recovered for a debt secured by mortgage of real estate, or for any part of such debt, it shall not be lawful for the sheriff to sell the equity of redemption of the mortgagor, his heirs or assigns, in such estate, by virtue of any execution upon such judgment.

When equity of redemption not to be sold.

SEC. 71. Whenever any execution against the property of the defendant shall be issued upon such judgment, the plaintiff's attorney shall indorse thereon a brief description of the premises mortgaged, referring to the page and book of the record in which such mortgage is recorded, with a direction to the sheriff not to levy such execution upon the said premises, or any part thereof.

What attorney to indorse on such execution.

SEC. 72. If such execution shall not be collected of the other property of the defendant, the sheriff shall return the same unsatisfied in whole or in part, as the case may require.

Sheriff's return of same.

SEC. 73. The time and place of holding any sale of real estate, pursuant to any execution, shall be publicly advertised previously for six weeks successively, as follows:

Advertisment of sale of real estate on execution.

1. A written or printed notice thereof shall be fastened up in three public places in the town where such real estate shall be sold; and if such sale be in a town different from that in which the premises to be sold are situated, then such notice shall also be fastened up in three public places of the town in which the premises are situated:

2. A copy of such notice shall be printed once in each week in a newspaper of such county, if there be one:

3. If there be no newspaper published in such county, and the premises to be sold are not occupied by any person against whom the execution is issued, or by some person holding the same as tenant or purchaser under such person, then such notice shall be published in the paper printed at the seat of government once in each week.

SEC. 74. In every such notice the real estate to be sold shall be described with common certainty, by setting forth the name of the township or tract, and the number of the lot, if there be any, and if there be none, by some other appropriate description.

Real estate sold to be described.

SEC. 75. The sale of real estate, or of any personal property by virtue of any execution, shall be at public vendue, between the hour of nine o'clock in the morning and the setting of the sun.

Sale to be public, and when to take place.

SEC. 76. Any officer who shall sell any real estate without the previous notices herein directed, or otherwise than in the manner herein prescribed, shall forfeit one thousand dollars to the party injured, in addition to any damages which such party may sustain.

Penalty on officer for making irregular sale.

SEC. 77. When real estate offered for sale by virtue of any execution, shall consist of several known lots, tracts or parcels, such lots, tracts or parcels shall be separately exposed for sale; and if

Lots, &c., to be sold separately, &c.

any person claiming to be the owner of any portion of such estate, or of such lots, tracts or parcels, or either of them, or claiming to be entitled by law to redeem any such portion, shall require such portion to be exposed for sale separately, it shall be the duty of the sheriff to expose the same for sale accordingly. No more of any real estate shall be exposed for sale than shall appear necessary to satisfy the execution.

Penalty for taking down or defacing notice.

SEC. 78. If any person shall take down or deface any notice of a sale of real or personal property put up by any sheriff previous to the day of sale therein specified, unless upon satisfaction of the execution by virtue of which such notice shall have been given, or upon the consent of the party suing out such execution and of the defendant therein, such person shall forfeit fifty dollars to the party in whose favor such execution was issued.

Omission to give notice, &c.. not to affect sale.

SEC. 79. The omission of any sheriff or other officer to give the notice of sale herein required, or the taking down or defacing of any such notice when put up, shall not affect the validity of any sale made to a purchaser in good faith, without notice of any such omission or offence.

Officer not to purchase property at sale.

SEC. 80. The sheriff or other officer to whom any execution shall be directed, and the deputy of such sheriff or officer holding any execution and conducting any sale of property in pursuance thereof, shall not directly or indirectly purchase any property whatever at any sale by virtue of such execution; and all purchases made by such sheriff, officer or deputy, or to his use shall be void.

Duplicate certificates of sale to be made, and their contents.

SEC. 81. Upon the sale of real estate by virtue of any execution, the officer making the same shall make out and subscribe duplicate certificates of such sale, containing,

1. A particular description of the premises sold:
2. The price bid for each distinct lot or parcel:
3. The whole consideration money paid:
4. The time when such sale will become absolute, and the purchaser will be entitled to a conveyance pursuant to law.

Certificates to whom to be delivered.

SEC. 82. One of the said duplicate certificates shall, within ten days after such sale, be filed in the office of the register of deeds of the county, and the other shall be delivered to the purchaser. If there be two or more purchasers, a certificate shall be delivered to each.

When to be evidence.

SEC. 83. Such original certificate, upon being proved or acknowledged in the manner required by law to entitle deeds to be recorded, or a copy of such original, duly certified by the register in whose office such orignal is filed, shall be received as presumptive evidence of the facts therein contained.

Real estate may be redeemed within two years.

SEC. 84. Within two years from the time when such sale shall have been made, the real estate so sold, or any distinct lot, tract or portion that may have been separately sold, may be redeemed by the payment to the purchaser, his personal representatives or assigns, or to the officer who made such sale for the use of such purchaser, of the sum of money which was bid on the sale of such lot or tract, together with the interest on that sum from the time of sale, at the rate of ten per cent a year.

By whom redeemed.

SEC. 85. Such redemption may be made,

CHAPTER 102.

1. By the person against whom the execution was issued, and whose right and title was sold in pursuance thereof: or,

2. If such person be dead, by his devisee of the premises sold, if the same shall have been devised, and if the same shall not have be devised, by the heirs of such person: or,

3. By any grantee of such person who shall have acquired an absolute title by deed, sale under mortgage or under an execution, or by any other means, to the premises sold, or to any lot, tract, parcel or portion which shall have been separately sold.

Ib.

Sec. 86. Any heir or devisee of the person against whom the execution was issued, and any grantee of such person, who shall have acquired an absolute title to a portion of the estate sold, or a portion of any lot, tract or parcel that shall have been separately sold, may redeem the lot, tract or parcel so sold on the same terms, and in the same manner as if he were grantee of the whole lot, tract or parcel; and shall have the same remedy to enforce contribution from those who shall own the residue of such tract, lot or parcel, as if the sum required to be paid by him to effect such redemption had been collected by a sale of the portion belonging to such grantee.

Ib.

Sec. 87. If there be several persons having undivided shares as joint tenants, or as tenants in common in the premises sold, or in any particular lot or tract sold, each person having such title may redeem the share or interest belonging to him, by paying to the purchaser, or to the officer as herein directed, a sum that will bear the same proportion to the whole purchase money bid for such premises, or for such particular lot or tract as the share proposed to be redeemed bears to the whole number of shares in such premises, or lot, or tract, together with the interest on such sum at the rate of ten per cent a year.

When certificate of sale void.

Sec. 88. Upon such payment being made by any person so entitled to redeem any real estate so sold, the sale of the premises so redeemed and the certificates of such sale, shall be null and void.

When interest vested in purchaser may be acquired by other persons.

Sec. 89. In case the persons entitled as herein before provided shall omit to redeem the premises so sold, or any part of them, within the two years above prescribed, then the interest vested in the purchaser by such sale may be acquired within three months after the expiration of such two years, by the persons and on the terms hereinafter prescribed.

When judgment creditor may acquire interest of purchaser, and how.

Sec. 90. Any creditor of the person against whom such execution issued, having in his own name, or as assignee, representative, trustee or otherwise, a decree in chancery or a judgment at law, rendered at any time before the expiration of twenty-seven months from the time of such sale, and which shall be a lien and charge upon the premises sold, by paying the sum of money which was paid on the sale of such premises, together with interest thereon, at the rate or seven per cent. a year from the time of such sale, shall thereby acquire all the rights of the original purchaser, subject to be defeated in the manner hereinafter mentioned.

Ib.

Sec. 91. If such judgment or decree be a lien on any lot, tract or parcel that shall have been separately sold, the creditor having the same, by paying as before provided, the sum which shall have

CHAPTER 102. been bid for such lot, tract or parcel, with interest as above mentioned, shall thereby acquire all the rights of the original purchaser, subject to be defeated in the manner hereinafter mentioned.

Ib. SEC. 92. If such judgment or decree be a lien on a specific portion only of any lot, tract or parcel so sold, the creditor having the same may acquire the title of the purchaser to the whole of such lot, tract or parcel, in the same manner as if such lien extended to the whole.

Ib. SEC. 93. Any such creditor having such decree or judgment, which is a lien upon any undivided share or interest in any real estate sold under any execution, may within the same time, on the same terms and in the same manner, acquire the title of the original purchaser to such share or interest, by paying such part of the whole purchase money of such real estate, as shall be in a just proportion to the amount of such share or interest.

When and how any other creditor may acquire interest of first creditor.

SEC. 94. Whenever any such creditor shall have acquired the title of the original purchaser pursuant to the foregoing provisions, any other creditor who might have acquired such title according to the said provisions, may become a purchaser thereof from the first creditor who acquired the same upon the following conditions:

1. By reimbursing to such first creditor, his personal representatives or assigns, the sum which may have been paid by him to acquire such title, together with interest thereon, at the rate of ten per cent. a year from the time of such payment to the time of such reimbursement:

2. If the judgment or decree, by virtue of which the first creditor acquired the title of the original purchaser, be prior to the judgment or decree of such second creditor, then such second creditor shall also pay to such first creditor the amount due on his judgment or decree:

3. But if such judgment or decree of the first creditor, at the time of his acquiring the title of the original purchaser, shall have ceased to be a lien as against such second creditor, it shall not be necessary to pay the amount thereof.

Ib., of second creditor, &c.

SEC. 95. In the same manner, any third or other creditor, who might according to the foregoing provisions acquire the title of the original purchaser, may become a purchaser thereof from the second, third or any other creditor who may have become such purchaser from any other creditor, upon the same terms and conditions specified in the last section.

Purchaser being creditor may acquire title.

SEC. 96. If the original purchaser of any premises, so sold, shall also be a creditor of the defendant, against whom the execution issued, and as such might acquire the title of any purchaser, according to the preceding provisions, he may avail himself of his decree or judgment, in the same manner and on the same terms herein prescribed. to acquire the title which any creditor may have obtained.

When plaintiff may acquire title.

SEC. 97. The plaintiff, under whose execution any real estate shall have been sold, shall not be authorized to acquire the title of the original purchaser, or of any creditor to the premises so sold by virtue of the decree or judgment on which such execution issued; but if he have any other decree or judgment which would entitle him to acquire such title according to the preceding provisions, he may avail himself of such other decree or judgment in the same manner and on the same terms as any other creditor

To whom money to be paid, &c.

SEC. 98. The sums required to be paid by the foregoing provisions to acquire the title of the original purchaser, or to become a purchaser from any creditor, may be paid to such purchaser or creditor, his representatives or assigns, or to the officer who made the sale for the use of the purchaser or creditor entitled to the same; upon such payment being made, the title of the original purchaser shall be thereby transferred to the creditor acquiring the same pursuant to the foregoing provisions, and from such creditor to any other creditor, becoming a purchaser thereof, as herein before provided.

Creditor to present purchaser, &c., evidence of his right.

SEC. 99. To entitle any creditor to acquire the title of the original purchaser, or to become a purchaser, from any other creditor, pursuant to the foregoing provisions, he shall present to and leave with such purchaser or creditor, or the officer who made the sale, the following evidence of his right:

1. A copy of the docket of the judgment or decree under which he claims the right to purchase, duly certified by the clerk of the court or of the county in which the same is docketed:

2. A true copy of all the assignments of such judgment or decree which are necessary to establish his claim, verified by his affidavit, or by the affidavit of some witness to such assignments:

3. An affidavit, by such creditor, or by his attorney or agent of the true sum due on such judgment or decree at the time of claiming such right to purchase.

When title of defendant divested.

From what time grantee deemed vested with legal title.

SEC. 100. The right and title of the person against whom the execution was issued, to any real estate which shall be sold thereby, shall not be divested by such sale until the expiration of twenty-seven months from the time of such sale; and if such real estate shall not have been redeemed as herein provided, and a deed shall be executed in pursuance of a sale, the grantee, in such deed, shall be deemed vested with the legal estate from the time of the sale on such execution, for the purpose of maintaining an action for any injury to such real estate.

When officer to execute conveyance and effect of same.

SEC. 101. After the expiration of twenty-seven months from the time of the sale of any real estate, if any part of the premises sold shall remain unredeemed by the person against whom the execution issued, or by any person entitled to redeem the same within two years from the time of such sale, according to the foregoing provisions, then the officer making such sale, shall complete the same by executing a conveyance of the premises so remaining unredeemed, either to the original purchaser or to the creditor who may have acquired the title of such original purchaser, or to the creditor who may have purchased such title from any other creditor, as the case may be, which conveyance shall be valid and effectual to convey all the right, title and interest which was sold by such officer.

When to be made to executor, &c.

SEC. 102. In case the person, who by the provisions of the preceding sections, would be entitled to a conveyance of any real estate, sold by virtue of an execution, shall die previous to the delivery of such conveyance, the officer making such sale shall execute and deliver such conveyance to the executors or administrators of the person so deceased.

Estate to be held in trust for heirs, &c.

SEC. 103. The real estate, so conveyed, shall be held in trust for the use of the heirs of such deceased person, subject to the dower of his widow, if there be any, but may be sold for the payment of his debts by the order of any judge of probate, in the same manner as lands whereof such deceased person died seized.

Proceedings if sheriff die &c., before execution satisfied or conveyance made.

SEC. 104. If any sheriff to whom an execution shall be delivered, die or be removed from office before such execution be satisfied, his under sheriff shall proceed thereon in the same manner as the sheriff might have done; and if a sheriff, who has sold any real estate, die or be removed before executing any conveyance in pursuance of such sale, such conveyance shall be executed by his under sheriff, in the same manner, and with the like effect, as if done by the sheriff.

Ib., if no under sheriff.

SEC. 105. If there be no such under sheriff, the court from which the execution issued, may, on the application of the plaintiff, appoint some suitable person to proceed on such execution and complete the same, instead of such under sheriff; and on the application of any person entitled to a conveyance, the court may appoint a proper person to execute the same. The person so appointed shall give such security as the court may require, and shall have the same power in relation to the object of his appointment, as the sheriff so dying or removed.

To whom redemption money paid in case of death, &c., of sheriff after sale.

SEC. 106. If any sheriff shall die, or be removed from office, after having made sale of any real estate, the moneys herein required to be paid to him for the redemption of such estate, or for the purpose of acquiring the title of the original purchaser, may be paid to his under sheriff, or to the clerk of the court, in the same manner, and with the like effect, as if paid to such sheriff.

When purchaser evicted, &c., may recover purchase money, &c.

SEC. 107. If the purchase of any real estate, sold by virtue of an execution, his heirs or assigns shall be evicted from the possession of such real estate; or if, in an action for the recovery thereof, judgment shall be rendered against him in consequence,

1. Of any irregularity in the proceedings, concerning such sale: or,

2. Of the judgment upon which such execution issued, being vacated or reversed:

Such purchaser, his heirs or assigns, may recover of the party for whose benefit such real estate was sold, the amount paid on the purchase thereof, with interest.

When party may have new execution; effect of same, &c.

SEC. 108. The party, for whose benefit such real estate was sold, and his personal representatives, upon such recovery being had against him, in consequence of any irregularity in the proceedings concerning such sale, may have further execution upon the judgment, by virtue of which such sale was made, to levy the sum paid on such sale, with interest; and such judgment shall be deemed valid and effectual for that purpose, against the defendant therein, his personal representatives, heirs and devisees; but not against any purchaser, in good faith, or any incumbrancer by mortgages, judgment or otherwise, whose title or whose incumbrance shall have accrued before the levy of such further execution.

When one or more joint defendants may compel contribution from lands of the others.

Sec. 109. When lands and tenements, in the hands of several persons, shall be liable to satisfy any judgment, and the whole of such judgment, or more than a due proportion thereof, shall be levied upon the lands of any one or more of such persons, the persons so aggrieved, or their personal representatives, may compel a just and equal contribution by all the persons whose lands and tenements ought to contribute to the satisfaction of such judgment.

How such lands liable to contribute.

Sec. 110. Such lands and tenements shall be liable to such contribution in the following order:

1. If they were conveyed by the defendant, in the execution, they shall be liable in succession, commencing with the lands last conveyed:

2. If they were sold under execution, against the defendant, they shall also be liable in succession, commencing with the lands sold under the last and youngest judgment:

3. If there be lands so liable, which were conveyed by the defendant in the execution, and also lands which have been sold under execution, against such defendant, they shall respectively be liable in succession, according to the order herein prescribed.

Original judgment to remain a lien and in force to compel contribution.

Sec. 111. If a bill be filed in chancery, to compel such contribution, the person aggrieved shall be entitled to use the original judgment, and by virtue thereof, to levy the amount which ought to be contributed by the lands and tenements subject to such judgment; and for that purpose, such judgment shall remain a lien and charge upon such lands and tenements for the term of ten years from the docketing thereof to the extent of the sum which ought to be so contributed, notwithstanding such sum, or any part thereof, may have been paid by the party seeking such contribution.

When not.

Sec. 112. But such original judgment shall not remain a lien upon any lands, nor shall they be subject to an execution as herein provided, unless the person aggrieved, within twenty days after the payment of any sum of money by him, for which he shall claim a contribution, shall file an affidavit with the clerk of the court in which the original judgment was rendered, stating the sum paid, and his claim to use such judgment for the reimbursement thereof.

Entry to be made by clerk.

Sec. 113. On the filing of such affidavit, the clerk shall make an entry in the margin of the docket of such judgment, stating the sum so paid, and that such judgment is claimed to be a lien to that amount.

His fees.

Sec. 114. The same fee shall be paid on filing any such affidavit, as for the filing and docketing a record of judgment.

Mortgagees, &c. may acquire interest of purchaser same as judgment creditors.

Sec. 115. A creditor by mortgage on real estate, his assignee or representative, where the mortgaged premises, or any part thereof, have been sold on execution, shall have the same right to acquire the interest of the purchaser of such real estate so mortgaged and sold, as is given to a judgment creditor by this chapter, and on acquiring such interest, shall be subject to all the provisions of this chapter in relation to the rights of other creditors, as are now applicable to judgment creditors.

To leave purchaser, &c., evidence of his right

SEC. 116. To entitle a creditor by mortgage, his assignee or representative, to acquire the title of the original purchaser, or to be substituted as a purchaser from any other creditor, pursuant to this chapter, he shall present to and leave with such purchaser or creditor, or the officer who made the sale, the following evidence of his right:

1. A copy of the mortgage under which he claims the right to purchase, duly certified by the register of the county where such mortgage is registered or recorded:

2. A copy of the assignment or assignments, where the mortgage has been assigned, verified by his affidavit, or the affidavit of some other person:

3. A copy of the letter of administration, or letters testamentary, where an administrator or executor applies to be substituted as a purchaser:

4. An affidavit by such mortgage creditor, his assignee or representative, or by his attorney or agent, stating the true sum due or to become due on such mortgage, at the time of claiming such right to purchase over and above all payments.

Officer who sold premises, or his successor to execute deed.

SEC. 117. In all cases where real estate has been, or shall hereafter be sold in pursuance of law, by virtue of an execution, it shall be the duty of the officer or his successor in office, or other person who sold, or shall hereafter sell, such real estate, to execute a deed of the premises so sold and unredeemed, agreeable to the provisions of law, either to the original purchaser, or to the creditor who may have acquired the title of such original purchaser, or to the creditor who may have purchased such title from any other creditor, or to the assignee, as the case may be, of the certificate of sale executed on such sale, to the purchaser of the premises therein described.

Claim of attachment may be inserted in execution and proceedings thereon.

SEC. 118. A claim of attachment may be inserted in writs of execution issued out of the circuit courts upon judgments rendered in said courts, and if sufficient property to satisfy said execution cannot be levied, it shall be lawful for the officer serving said writ of execution to attach in the hands of the defendants, or any other persons, all property, real or personal, goods and chattels, moneys, choses in action, and all equitable interests in the same, and to proceed therein as in serving attachments issued in pursuance of the chapter concerning the writ of attachment.

Officer to notify defendant and garnishees.

SEC. 119. The officer serving such writ shall notify in writing the defendant named therein, and all other persons upon whom he may have served the same as garnishees, to appear before the court .to which the said writ may be returnable, on the return day thereof, and then and there answer under oath all such interrogatories as may be put to them touching or concerning the property, money or choses in action, or other thing alleged to be in their hands belonging to the defendant or defendants, and in which such defendants may have an interest either legal or equitable.

Powers of court and proceedings therein on return of writ, &c

SEC. 120. It shall and may be lawful for the court, upon the return of said writ and of service of said notice, to examine under oath the said defendants and garnishees, and any other person or persons, either in their behalf or on behalf of the plaintiffs in said writ, and if upon such examination it shall appear to said court

CHAPTER 103.

that any property of any kind belonging to said defendants, either legally or equitably, is in the hands of the said garnishees, or either or any of them, or that they or any of them are indebted to the said defendants, then it shall and may be lawful for the said court to render judgment against such person or persons for the amount of the plaintiff's claim on said execution, or so much thereof as may be found in the hands of or owing by such garnishee as aforesaid, and to award execution against such garnishee therefor.

Ib.

Sec. 121. If upon such examination it shall appear to the court that any property, money, or choses in action, came to the hands of such garnishee or person so notified as aforesaid, for the purpose of hindering or delaying the creditors of the defendant in execution in the collection of their debts or demands, then it shall and may be lawful for the court to enter an order or decree against such persons so committed, and also against the said defendants, and enforce the same according to the practice and authority of a court of chancery in cases upon creditors' bills.

CHAPTER 103.

OF SUITS AND PROCEEDINGS BY AND AGAINST EXECUTORS AND ADMINISTRATORS, AND AGAINST THE NEXT OF KIN, HEIRS, LEGATEES AND DEVISEES IN CERTAIN CASES.

When actions for torts may be brought by and against executors and administrators

Section 1. For wrongs done to the property, rights or interest of another, for which an action might be maintained against the wrong doer, such action may be brought by the person injured, or after his death by his executors or administrators, against such wrong doer, and after his death, against his executors or administrators, in the same manner and with the like effect in all respects as actions founded upon contracts.

Limitation of preceding section.

Sec. 2. But the preceding section shall not extend to actions for slander, for libel, or to actions of assault and battery, or false imprisonment, nor to actions on the case for injuries to the person of the plaintiff, or to the person of the testator or intestate of any executor or administrator.

When executors &c., not to be held to bail.

Sec. 3. No executors or administrators shall be held to bail in any action against them in their representative character, unless such action be brought to charge them with waste.

How held to bail in action for waste.

Sec. 4. Nor shall they be held to bail in such action, unless upon an order of the judge of the court in which such action shall be brought, founded on an affidavit of the facts and circumstances to support such charge.

Judgments how rendered, and executions how issued against executors, &c.

Sec. 5. In actions against several executors or administrators, they shall all be considered as one person, representing their testator or intestate; and such of them as shall be first served with process, or as shall first appear in the action, shall answer the plaintiff. Judgment shall be rendered, and in the cases where execution may be issued against the property of the testator or intestate, it shall be awarded against such as shall have appeared and the others named in the first process, in the same manner as if they had all appeared.

Judgment by default, when not to be deemed evidence of assets

SEC. 6. But no judgment rendered in such action by default or otherwise, shall be deemed evidence of any admission of assets in the hands of any executor or administrator, who was not served with process in such action, or who did not actually appear therein.

All executors, &c. may be brought into court.

SEC. 7. The preceding section shall not deprive any plaintiff of the usual remedies to bring into court all the executors or administrators against whom the action is brought.

What not deemed part of time for commencements of actions against.

SEC. 8. The term of eighteen months after the death of any testator or intestate, shall not be deemed any part of the time limited by law for the commencement of actions against his executors or administrators.

Same as to commencement of actions by.

SEC. 9. The time which shall have elapsed between the death of any person and the granting of letters testamentary or of administration on his estate, not exceeding six months, and the period of six months after the granting of such letters, shall not be deemed any part of the time limited by any law for the commencement of actions by executors or administrators.

Executor, &c., pleading false plea, not thereby liable

SEC. 10. No executor or administrator shall be made personally liable for any debt, damages or costs, by reason of his having pleaded any false plea.

Executor of executor not act on estate of first testator.

SEC. 11. An executor of an executor shall have no authority to commence or maintain any action or proceeding relating to the estate, effects or rights of the testator of the first executor, or to take any charge or control thereof as such executor.

Real estate of deceased person not bound by judgment against executor.

SEC. 12. The real estate which belonged to any deceased person, shall not be bound or in any way affected by any judgment against his executors or administrators, nor shall it be liable to be sold by virtue of any execution issued upon such judgment.

When subsequent executors, &c., may have execution, &c.

SEC. 13. Any subsequent executors or administrators shall have execution upon any judgments that may have been recovered by any person who preceded them in the administration of the same estate, within one year from the time of the docketing of such judgment, without reviving the same by scire facias, and without any other proceedings to give notice to the defendant in such judgment.

In actions against executors, &c., when inventory may be rebutted.

SEC. 14. In any action against executors or administrators, in which the fact of their having administered the estate of their testator or intestate, or any part thereof, shall come in issue, and the inventory of the property of the deceased, made and filed by them, shall be given in evidence, the plaintiff or defendant may rebut the same by proof:

1. That any property or effects have been omitted in such inventory, or were not returned therein at their true value:

2. That such property has perished or been lost, without the fault of such executor or administrator, or that it has been fairly sold by them at private or public sale at a less price than the value so returned; or that since the return of the inventory such property has deteriorated or enhanced in value.

When not to be charged with de-

SEC. 15. In every such action the defendant shall not be charged for any demands or rights in action specified in their inventory, unless it appear that such demands or rights have been collected, or might have been collected with due diligence.

mands, &c., inventoried,

Sec. 16. The two last sections shall not be construed to vary any rules of evidence in respect to any proof which an executor or administrator may now make by law.

Construction of two preceding sections.

Sec. 17. No person shall be liable to an action as executor of his own wrong, for having received, taken, or interfered with the property of a deceased person; but shall be responsible as a wrongdoer in the proper action to the executors, or general or special administrators of such deceased person, for the value of any property or effects so taken or received, and for all damages caused by his acts to the estate of the deceased.

No person shall be liable as an executor in his own wrong, but shall be sued as a wrong doer.

Sec. 18. When administration of the effects of a deceased person, which shall have been left unadministered by any previous executor or administrator of the same estate, shall be granted to any person, such person may bring a writ of error upon any judgment obtained against such previous executor or administrator of the same estate, or against the original testator or intestate, and shall defend any writ of error brought upon any such judgment; and shall have the same remedies in the prosecution or defence of any action by or against such previous executors or administrators, and for the collection and enforcing of any judgment as they would have by law.

Administrators de bonis non may prosecute and defend suits commenced by and against their predecessors.

Sec. 19. Whenever an action shall be brought by any legatee against an executor or administrator, and the want of assets to pay all the debts of the deceased, and all the legacies bequeathed by him or any of them, shall be pleaded, the cause shall be referred to referees, to examine the accounts of the defendants, and to hear and report upon the allegations and proofs of the parties in respect to such plea.

In suits brought by legatees against executors, &c, when referees to be appointed.

Sec. 20. Such referees shall proceed in the manner provided by law in respect to referees of actions in which there is a long account: and all the provisions of law in relation to such referees shall apply to referees appointed pursuant to the last section, and to their proceedings and the judgment thereon.

Referees how to proceed.

Sec. 21. In all cases the costs of the action, or of either party, shall be paid as the court may direct, out of the estate of the deceased, or by the defendants personally, if their refusal to pay such legacy, or their defence of the action shall appear to have been unreasonable.

Costs how to be paid.

Sec. 22. If the plaintiff in any such suit shall recover only part of his demand for the want of assets in the hands of the defendants, and assets shall afterwards come to their hands, he shall have a new action for the recovery thereof, or for the proportionate share thereof, to which he may be entitled; and the same proceedings, in all respects, shall be had in such action.

When legatee may have new action.

Sec 23. When the executor or administrator of a trustee, carrier or other person who claimed only a special property in any goods, to hold them for the use and benefit of another, shall recover such goods, or the value thereof, or damages for the taking or detention thereof, for any injury done to the same, the goods or money so recovered shall not be considered assets in his hands, but shall, after deducting the costs and expenses of the suit, be paid

What goods and money not to be considered assets.

over and delivered to the person for whose use or benefit they were so claimed or held by the deceased person.

Ib., &c.

SEC. 24. When judgment for a return in an action of replevin, shall be rendered against an executor or administrator, the goods returned by him shall not be considered assets in his hands; and if they shall have been included in the inventory, it shall be sufficient discharge, for the executor or administrator, to show that they have been returned in pursuance of such judgment.

Of Proceedings against Next of Kin, Heirs, Legatees and Devisees in Certain Cases.

Actions against next of kin, how brought.

SEC. 25. Actions against the next of kin of any deceased person to recover the value of any assets that may have been paid to them by an executor or administrator, may be brought against all of the said relatives jointly, or one or more of them, for the amount received by each of them.

Amount of recovery in such action

SEC. 26 In such action the plaintiff shall be entitled to recover the value of all the assets received by all the defendants in the suit, if necessary to satisfy his demand; and the amount of the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each; and no allowance or deduction shall be made from such amount on account of there being other relatives to whom assets have also been delivered.

Next of kin of whom recovery had, may compel contribution,

SEC. 27. Any of the next of kin, against whom a recovery shall be had pursuant to the preceding sections, may maintain an action against the other relatives of the testator to whom any such assets may have been paid, jointly, or against any of them seprately, for a just and equal contribution; and shall be entitled to recover of each defendant, such an amount as shall be in the same proportion to the whole sum collected of the plaintiff, as the value of the assets delivered to such defendant bore to the value of all the assets delivered to all the relatives of the deceased.

Actions by creditors against legatees, how brought.

SEC. 28. Actions by creditors of any deceased person to recover the value of any assets that may have been paid by any executor or administrator to any legatees of their testator, may be brought against all of such legatees jointly, or against any single legatee separately.

What plaintiff must show to recover.

SEC. 29. In such action, the plaintiff shall not be entitled to recover unless he shows,

1. That no assets were delivered by the executor or administrator of the deceased to his next of kin: or,

2. That the value of such assets has been recovered by some other creditor: or,

3. That such assets are not sufficient to satisfy the demands of the plaintiff:

And in the last case he shall be entitled to recover the deficiency.

Amount recovered, how apportioned.

SEC. 30. The whole amount which the plaintiff shall be entitled to recover, shall be apportioned among all the legatees of the testator, in proportion to the respective amounts of their several legacies; and such proportion only shall be recovered of each legatee.

Costs how apportioned.

Sec. 31. If any action be brought against several relatives jointly, or against several legatees jointly for assets delivered to them, if a recovery be had against them, the costs of such action shall be apportioned to the several defendants, in proportion to the amount of the debt or damages recovered against each of them.

Judgment, what to express, &c.

Sec. 32. In every such action, the judgment shall express the amount recovered against each defendant, for debt or damages, and costs; and the execution thereon shall correspond to such judgment.

Payment by one defendant to discharge him.

Sec. 33. In case of any judgment against several relatives of a testator, or against several legatees, the payment or satisfaction of the amount recovered against any one of the defendants, shall discharge such defendant, and shall exonerate him and his property from such judgment, and from the execution thereon.

Heirs and devisees to what extent liable for debts.

Sec. 34. The heirs of every person who shall have died intestate, and the heirs and devisees of any person who shall have died after the making of his last will and testament, shall respectively be liable for the debts of such person, arising by simple contract or by speciality, to the extent of the estate, interest and right, in the real estate which shall have descended to them from, or been devised to them by, such person.

Ib.

Sec. 35. But such heirs shall not be liable for any such debt, unless it shall appear that the personal assets of the deceased were not sufficient to pay and discharge the same; or that after due proceedings before the proper probate court, and at law, the creditor has been unable to collect such debt, or some part thereof, from the personal representatives of the deceased, or from his next of kin or legatees.

Ib.

Sec. 36. In case the personal assets were sufficient to pay a part of such debt, or in case a part thereof shall have been collected, as in the last section mentioned, the heirs of such deceased person shall be liable for the residue unpaid or unsettled.

Ib.

Sec. 37. But the two last sections shall not affect or impair the liability of heirs for any debt of their ancestor, where such debt was by his will expressly charged exclusively upon the real estate descended to such heirs; or where such debt is, by such will expressly directed to be paid out of the real estate descended, before resorting to the personal estate.

Creditors to show facts required to charge heirs.

Sec. 38. It shall be incumbent on the creditors seeking to charge any heirs, to show the fact and circumstances herein required to render them liable.

Order of preference to be given in payment of debts, by heirs, &c

Sec. 39. In cases where the next of kin, heirs and devisees, are liable for the debts of their ancestors as herein provided, they shall give preference in the payment of the same, and shall be liable therefor in the following order:

1. Debts entitled to a preference under the laws of the United States:

2. Judgments docketed, and decrees enrolled against their ancestor, according to the priority thereof respectively:

3. Recognizances, bonds, sealed instruments, notes, bills, and unliquidated demands and accounts.

CHAPTER 103
Ib.

Sec. 40. No preference shall be given by any next of kin, legatee, heir or devisee, to any debt over other debts of the same class, except those specified in the second class of the last section; nor shall a debt, due and payable, be entitled to a preference over debts not due; nor shall the commencement of a suit against any next of kin, legatee, heir or devisee, for the recovery of any debt, entitle such debt to any preference over others of the same class.

When recovery not to be had against next of kin, &c

Sec. 41. The next of kin, legatees, heirs and devisees may show that there are debts of a prior class unsatisfied, or that there are unpaid debts of the same class with that on which the suit is brought, and if it appear that the value of the personal property delivered to them, or of the real estate, descended or devised to them, does not exceed the debts of a prior class, judgment shall be rendered in their favor.

When judgment rendered only for portion of debt

Sec. 42 If the personal property delivered to such next of kin, or legatee, or if the real estate descended or devised to such heirs and devisees exceed the amount of debts which are entitled to a preference over the debt for which the suit is brought, judgment shall be rendered against them only for such a sum as shall be a just proportion to the other debts of the same class with that on which the suit is brought.

Prior debt paid, to be credited

Sec. 43. If any debt of a prior class to that on which the suit is brought, or of the same class, shall have been paid by any next of kin, legatees, heirs or devisees, they may give evidence of such payment; and the amount of debts so paid shall be estimated in ascertaining the amount to be recovered, in the same manner as if such debts were outstanding and unpaid, as prescribed in the two last sections.

When heirs to be prosecuted in equity

Sec. 44. The heirs of any person who may be liable to any creditor of such person in consequence of lands having descended to them, shall be prosecuted jointly in a court of equity, but shall not be liable to any suit in a court of law.

Infancy of defendants not to delay suits.

Sec. 45. Suits against heirs or devisees shall not be delayed, nor shall the remedy of the plaintiffs be suspended by reason of the infancy of any such heir or devisee; but guardians to defend their rights in such suits, shall be appointed, as in other cases.

Real estate descended to be specified.

Sec. 46. In any bill filed against heirs to charge them on account of any lands and tenements, or hereditaments, descended to them, the complainant shall specify with convenient certainty the real estate so descended.

What heir may show in defence.

Sec. 47. In such suit any heir may show that at the time of the commencement thereof he had nothing by descent, or that he had not sufficient to satisfy the complainant's demand.

Value of lands, how ascertained

Sec. 48. If it appear that any lands or tenements have descended to such heir, the court shall inquire and ascertain the value thereof, either by reference to a proper officer, or by awarding an issue for that purpose.

When debt to be levied of real estate descended.

Sec. 49. If it appear that the lands, tenements or hereditaments so descended, were not aliened by such heir, at the time of the commencement of the suit; or if the heir confess the action, and show what lands, tenements or hereditaments have descended to him, the court shall decree that the debt of the plaintiff, or the proportion thereof which he is entitled to recover, shall be levied of such real estate so descended, and not otherwise.

Decree to have preference as a lien on such estate.

SEC. 50. Every final decree rendered in such suit shall have preference as a lien on the real estate descended, to any judgment or decree obtained against such heir personally, for any debt or demand in his own right.

Heir, when personally liable.

SEC. 51. When it shall appear in any such suit, that before the commencement thereof, any such heir has aliened the lands, tenements or hereditaments descended to him, or any part thereof, he shall be personally liable for the value of the estate so aliened, and judgment shall be rendered therefor, and execution awarded, as in suits for his own debts.

Foregoing provisions relative to preference of debts to apply

SEC. 52. In such cases, the preference herein before declared, in respect to demands against the ancestor of such heir, shall apply, and such heir may show the same matters herein before allowed, and the same proceedings and judgment shall be had thereon.

Lands aliened, not affected by decree.

SEC. 53. But no lands, tenements or hereditaments, aliened in good faith by any heir, before any suit commenced against him, shall be liable to execution, or in any manner affected by a decree against such heir.

Amount recovered against heirs, &c., how apportioned.

SEC. 54. In suits brought against several heirs jointly, or several devisees jointly, the amount which the plaintiff shall be entitled to recover shall be apportioned among all the heirs of the ancestor, or among all the devisees of the testator, in proportion to the value of the real estate descended to such heirs, or devised to such devisees respectively, as the case may be, and such proportion only shall be recovered of each heir, or of each legatee.

Costs, how apportioned, &c.

SEC. 55. The costs of such suit shall be apportioned among the several defendants, in proportion to the debt or damages recovered against each of them; the decree shall express the amount recovered against each defendant for debt, or damages and costs; and the execution issued thereon shall conform to such decree.

When decree may be executed against infants.

SEC. 56. When a decree shall be rendered against any heirs or devisees who are infants, no execution issued thereon shall be executed against them, until the expiration of one year after the rendition of such decree; but such execution may be executed against any defendants in the same suit, who are of full age.

Names of infants to be indorsed on execution, &c.

SEC. 57. The solicitor issuing an execution in every such case, shall indorse thereon the names of the defendants, who are infants, and shall direct the sheriff not to execute the same against such infants, until the time specified in the last section.

When devisees not liable to creditors.

SEC. 58. Devisees made liable by the foregoing provisions to the creditors of their testator, shall not be so liable, unless it shall appear that his personal assets and the real estate of the testator, descended to his heirs, were insufficient to discharge such debt; or unless it shall appear that after due proceedings before the proper probate judge and at law, the creditor has been unable to recover such debt, or some part thereof, from the personal representatives of the testator, or from his next of kin or legatees, or from his heirs.

Extent of their liability in certain cases.

SEC. 59. In either of the cases specified in the last section, the amount of the deficiency of the personal assets, and of the real estate descended, to satisfy the debt of the plaintiff, and the amount which such plaintiff may have failed to recover from the personal representatives of the testator, his next of kin, legatees and heirs, may be recovered of the devisees of such testator, to the extent of the real estate devised to them respectively.

Limitation of last two sections.

SEC. 60. But the two last sections shall not impair or affect the liability of devisees for any debt of their testator, where such debt was by his will expressly charged exclusively upon the real estate devised, or made payable exclusively by such devisee by the terms of the will, or made payable out of the estate devised, before resoring to the personal estate, or to any other real estate descended or devised.

What creditors to show in suits against devisees.

SEC. 61. It shall be incumbent on the creditor seeking to charge any devisees, to show on the trial the facts and circumstances herein required to render them liable.

Provisions in regard to heirs to apply to devisees.

SEC. 62. The provisions herein contained with regard to heirs, and to proceedings by and against them, shall be applicable to suits and proceedings against devisees, who shall in like manner be sued jointly.

Devisees, how liable, through estate aliened, &c.

SEC. 63. Devisees shall be liable, in the same manner and to the same extent, as heirs, notwithstanding they may have aliened the real estate devised before suit brought against them; but no real estate aliened in good faith by any devisee before the commencement of a suit against him, shall be liable to execution upon or in any manner affected by a decree against such devisee.

Of Infants born after making of Will, &c.

Child born after making of will entitled to portion of estate, and may compel distribution and partition, &c.

SEC. 64. In cases where, by the provisions of any statute, a child, born after the making of a will, shall be entitled to succeed to a portion of the testator's real and personal estate, such child shall have the same rights and remedies to compel a distribution of the personal estate and partition of the real estate, as are provided by law for the next of kin and for heirs, and shall in all respects be liable in the same manner and to the same extent to the creditors of his ancestor, in respect to the personal property delivered to him and the real estate descended to him, as are herein prescribed in relation to next of kin and heirs.

Ib.

SEC. 65. Such child shall be authorized to recover of the legatees who may have received any property or effects of the testator, the portion of such property or effects to which he may be entitled, by an action of replevin, or of trover or assumpsit, as the case may require: and shall also be entitled to recover of the devisees of any real estate, under the will of the testator, such portion of such real estate as shall belong to him.

Ib.

SEC. 66. In cases where a distribution of such personal estate shall not have been made by the judge of probate to any such child born after the making of a will, the court shall have power to compel the same; and the said court shall have power also to compel just and equal contribution by the legatees under such will, to make up the portion of personal property to which such child shall be entitled.

SEC. 67. The court shall also have power to compel partition between the devisees of any real estate, and such child so entitled to a portion of such real estate, so as to enforce a just and proportionate contribution by each devisee.

Ib.

SEC. 68. The foregoing provisions relative to a child born after the making of a will, shall apply equally in all respects to every person who being a witness to a will, shall be entitled by the provisions of any statute to recover any portion of the personal or real estate of the testator from the legatees and devisees named in such will.

Above provisions to apply to witness to will entitled to share of estate.

CHAPTER 104.

OF WRITS OF ERROR AND PROCEEDING THEREON, AND OF BILLS OF EXCEPTION.

SECTION 1. Writs of error, in civil and criminal cases, may issue of course, out of the supreme court of this state, in vacation as well as in term time, and shall be returnable to the same court.

Writs of error, when and how to issue.

SEC. 2. No writ of error shall operate to stay or supercede the execution, in any civil action, unless the plaintiff in error, or some person in his behalf, shall give bond to the defendant, with one or more sufficient sureties, with condition that the plaintiff shall prosecute his suit to effect, and shall pay and satisfy such judgment as shall be rendered thereon.

Not to stay execution unless bond given.

SEC. 3. The sufficiency of sureties and the sum for which the bond shall be given, shall be determined, in each case, by any judge of the supreme court or by the clerk from whose office the writ of error is issued, according to such general rules as the court may from time to time establish.

Judge or clerk of supreme court to approve bond, &c.

SEC. 4. The bond, if any is given, shall be filed in the office of the clerk of the supreme court, for the use of the defendant, and no execution shall be issued thereafter, upon the judgment complained of, during the pending of the writ of error; and if execution shall have been already issued, the clerk shall make and sign a certificate of the issuing of the writ of error, and the filing of the bond, and after notice of such certificate to the officer holding the execution, all further proceedings thereon shall be stayed.

Where bond to be filed; execution stayed, &c.

SEC. 5. The party prevailing on a writ of error, in any civil action, shall, in all cases, be entitled to his costs against the adverse party, and if the judgment is affirmed, the court shall adjudge to the defendant in error damages for his delay, not less than at the rate of seven per cent and not exceeding twelve per cent a year, on the amount recovered by the former judgment; and in such case they may also, in their discretion, award to the defendant double costs.

Party prevailing entitled to costs; if judgment affirmed, damages awarded to defendant in error.

Proceedings on writs of error, how conducted.

Sec. 6. The proceedings upon writs of error, as to the assignment of errors, and the scire facias to the defendant, and the pleadings, judgment, and all other matters not herein provided for, shall be according to the course of the common law, and such general rules as shall be made by the supreme court.

How writ of error to be issued on judgment for capital offence.

Sec. 7. No writ of error upon a judgment for any capital offence, shall issue, unless allowed by one of the judges of the supreme court, after notice given to the attorney general of the state.

In other criminal cases to issue of course; when to stay execution of judgment.

Sec. 8. Writs of error upon judgment, in all other criminal cases, shall issue, of course, but they shall not stay or delay the execution of the judgment or sentence, unless they shall be allowed by one of the judges of the supreme court, with an express order thereon for a stay of proceedings on the judgment or sentence.

When stay of proceedings ordered, how prisoner disposed of.

Sec. 9. When a stay of proceedings shall be ordered, as provided in the preceding section, the judge may at the same time make such order, as the case may require, for the custody of the plaintiff in error, or for letting him to bail, or the party may, upon a writ of habeas corpus procure his enlargement, upon giving bail, if entitled thereto.

Ten per cent damages allowed, where judgment is affirmed on error.

Sec. 10. In all cases where the judgment of the court below has been superceded by a writ of error, and the judgment shall be affirmed by the supreme court, the supreme court shall award ten per cent damages upon the amount of the judgment below, exclusive of interest and costs, and execution shall be issued therefor in favor of the defendant in error.

Dismissal of writ of error, &c., not to preclude another writ.

Sec. 11. No discontinuance, nonsuit, or dismissal of a writ of error in the supreme court, shall preclude the party from suing out another writ of error in the same cause, within the time limited by law.

Bill of exception, how taken and signed.

Sec. 12. If any person, who is or shall be impleaded before any court in any civil action where a writ of error lies to a higher tribunal, shall allege an exception, such exception being reduced to writing, shall be signed by the judge or judges allowing the same, or by a majority of them, and shall become a part of the record, if the party taking the same shall so elect.

CHAPTER 105.

MISCELLANEOUS PROVISIONS.

Giving notice of truth of words spoken, &c., in slander, not to be evidence of malice.

Section 1. If the defendant in any action for slander or for publishing a libel, shall give notice in his justification, that the words spoken or published were true, such notice, though not maintained by evidence, shall not, in any case, be of itself proof of the malice alleged in the declaration.

In actions for forfeitures, general issue may be plead and the special matter given in evidence.

Sec. 2. In every suit or action brought to recover any forfeiture, the defendant may plead the general issue, and give in evidence any special matter which might have been in bar of the suit.

Issues of law to be first tried.

Sec. 3. When there are several issues in law and in fact, the issue in law shall be first determined before the issue in fact be tried.

Judgment on bonds to be for the penal sum, &c.

SEC. 4. In all actions brought for breach of the condition of a bond, or to recover a penalty for the non-performance of any covenant, contract or agreement, when it shall appear by verdict, default, confession or otherwise, that the condition is broken, or the penalty forfeited, judgment shall be entered in the common form, for the penal sum, but no execution shall issue thereon, except as is provided in the following sections.

How execution awarded on same, &c.

SEC. 5. The court shall award an execution in such case for so much of the penal sum as shall then be due and payable, in equity and good conscience, for the breach of the condition, or other non-performance of the contract, which sum shall be ascertained and determined by the court, unless either party shall move to have it assessed by the jury, or unless the court shall think proper to have the question so decided, in which cases the sum so due shall be assessed by a jury.

How further execution may be awarded.

SEC. 6. If any further sum shall afterwards become due on such bond or other contract, the plaintiff, or his executor or administrators, may have a scire facias on the judgment from the court in which it was so rendered against the original defendant or his executors, administrators, heirs, devisees, or assigns, as the case may be, suggesting such further breaches of the contract as shall have accrued, and summoning the adverse party to show cause why execution should not be awarded upon the judgment for the damages caused by such further breaches.

Ib.

SEC. 7. The sum due on such suit shall be assessed and determined in the same manner as in the original suit, and execution shall be awarded accordingly, and the like proceedings may be had upon occasion of any further breaches of the same contract, as often as they shall occur, until the whole of the penalty is exhausted.

Penalty for malicious prosecutions, &c.

SEC. 8. Every person who shall, for vexation and trouble, or maliciously, cause or procure any other to be arrested, attached, or in any way proceeded against, by any process or proceeding at law or in equity, or in any other manner prescribed by law, to answer to the suit or prosecution of any person, without the consent of such person, or where there is no such person known, shall forfeit to the person so arrested, attached or proceeded against, treble the damages and expenses, which, by any verdict, shall be found to have been sustained and incurred by him, and shall forfeit to the person in whose name such arrest or proceeding was had, two hundred and fifty dollars, and shall be deemed guilty of a misdemeanor, punishable, on conviction, by imprisonment for a time not exceeding six months.

TITLE XXIV.

Of Suits Relating to Real Property.

Chapter 106. Of the action of ejectment.
107. Of improvements on real estate.
108. Of the partition of lands owned by several persons.
109. Of waste.
110. Of actions for private nuisances.
111. General provisions concerning actions relating to real estate.

CHAPTER 106.

OF THE ACTION OF EJECTMENT.

Action of ejectment allowed. SECTION 1. The action of ejectment may be brought in the courts of this state subject to the provisions hereinafter contained.

In what cases may be brought. SEC. 2. It may also be brought,

1. In the same cases in which a writ of right might heretofore be brought by law to recover lands, tenements or hereditaments, and by any person claiming an estate therein, in fee or for life, either as heir, devisee or purchaser:

2. By any widow entitled to dower, or by a woman so entitled and her husband, after the expiration of six months from the time her right accrued, to recover her dower of any lands, tenements or hereditaments.

By whom. SEC. 3. No person can recover in ejectment, unless he has, at the time of commencing the action, a valid subsisting interest in the premises claimed, and a right to recover the same, or to recover the possession thereof, or of some share, interest or portion thereof, to be proved and established at the trial.

Against whom. SEC. 4. If the premises for which the action is brought are actually occupied by any person, such actual occupant shall be named defendant in the declaration; if they are not so occupied, the action must be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto or some interest therein at the commencement of the suit.

How commenced. SEC. 5. It shall be commenced by the service of a declaration, in which the name of the real claimants shall be inserted as plaintiffs; and all the provisions of law concerning lessors of a plaintiff shall apply to such plaintiffs.

Fictitious names, &c, abolished. SEC. 6. The use of fictitious names of plaintiffs or defendants, and of the names of any other than the real claimants and the real defendants, and the statement of any lease or demise to the plaintiff, and of ejectment by a casual or nominal ejector, are hereby abolished.

Declaration.

Sec. 7. It shall be sufficient for the plaintiff to aver, in his declaration, that on some day therein to be specified, and which shall be after his title accrued, he was possessed of the premises in question, describing them as hereinafter provided; and being so possessed thereof, that the defendant afterwards, on some day to be stated, entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, to his damage, any nominal sum the plaintiff shall think proper to state.

Premises, how described.

Sec. 8. In such declaration the premises claimed shall be described with convenient certainty, designating the number of the lot or township, if any, in which they shall be situated; if none, stating the names of the last occupants of lands adjoining the same, if any; and if none, describing such premises by metes and bounds, or in some other way, so that from such description possession of the premises claimed may be delivered.

Plaintiff claiming undivided share.

Sec. 9. If such plaintiff claims any undivided share or interest in any premises, he shall state the same particularly in such declaration.

To specify estate, &c.

Sec. 10. If the action be brought for the recovery of dower, the declaration shall state that the plaintiff was possessed of the one undivided third part of the premises, as her reasonable dower as a widow of her husband, naming him. In every other case the plaintiff shall state whether he claims in fee, or whether he claims for his own life or the life of another, or for a term of years, specifying such lives, or the duration of such term.

Plaintiffs how named, &c.

Sec. 11. In any case other than where the action shall be brought for the recovery of dower, the declaration may contain several counts, and several parties may be named as plaintiffs, jointly, in one count, and separately in others.

Notice to be subjoined to declaration, and contents.

Sec 12. To such declaration there shall be subjoined a notice, in writing, by the plaintiff or his attorney, addressed to the defendant, and notifying him,

1. That the said declaration will be filed, on some day in the then next term of the court in which the action is brought, specifying such day; or if the same be served during the term of any court, that it will be filed on such day in such term, specifying the same:

2. That upon filing the same a rule will be entered requiring such defendant to appear and plead to such declaration, within twenty days after the entry of such rule: and,

3. That if he neglect so to appear and plead, a judgment, by default, will be entered against him, and the plaintiff will recover possession of such premises.

Declaration, how served.

Sec. 13. If the premises are actually occupied, the declaration shall be served by delivering a copy thereof, with the notice above prescribed, to the defendant named therein who shall be in the occupation thereof, personally, or by leaving the same with some person of proper age at the dwelling house of such defendant, if he be absent.

Ib.

Sec. 14. If the premises claimed are not actually occupied, the declaration and notice shall be served on the defendant named therein, personally, or if he cannot be found, by leaving the same with some person of proper age at the residence of such defendant.

Rule to plead, when not entered, &c.

SEC. 15. But where the declaration shall have been served in any other manner than upon the defendant, personally, no rule to plead shall be entered, without the special order of the court.

When to be entered, &c.

SEC. 16. Instead of the rule to appear and enter into the consent rule, the plaintiff, on the day specified for that purpose in the notice aforesaid, or on some other day thereafter, upon filing the declaration with an affidavit of the due service of a copy thereof, and of the notice herein before required, shall be entitled to enter a rule, requiring the defendaut to appear and plead within twenty days after the entering of such rule, and in case the defendant shall neglect so to appear and plead within such time, his default shall be entered.

Authority of attorney to commence action.

SEC. 17. No action in ejectment shall be commenced by an attorney, unless he has written authority from each one of the plaintiffs, for commencing the same; any written request of such plaintiff, or his agent, to commence such action, or any written recognition of the authority to commence the same, duly proved by the affidavit of such attorney, or other competent witness, shall be sufficient presumptive evidence of such authority; such affidavit shall be served on the defendant at the time of the service of the declaration.

Defendant what to plead, &c.

SEC. 18. The defendant may demur to the declaration as in personal actions, or he shall plead the general issue only, which shall be that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff, as alleged in the declaration, and the filing and service of such plea or demurrer shall be deemed an appearance in the cause. And upon such plea, the defendant may give the same matter in evidence, and the same proceedings shall be had as formerly, upon the plea of not guilty in the action of ejectment, except as herein otherwise provided.

Evidence.

SEC. 19. Upon such plea, the defendant may give in evidence any matter which, if pleaded in the former writ of right, or action of dower, would bar the action of the plaintiff.

Rule abolished.

SEC. 20. The consent rule is hereby abolished.

Plaintiff to show right of possession.

SEC. 21. It shall not be necessary for the plaintiff to prove an actual entry under title, nor the actual receipt of any profits of the premises demanded; but it shall be sufficient for him to show a right to the possession of such premises, at the time of the commencement of the suit as heir, devisee, purchaser or otherwise.

Lease, entry, &c. not to confessed, &c.

SEC. 22. It shall not be necessary, on the trial, for the defendant to confess, nor for the plaintiff to prove lease, entry and ouster, or either of them, except as provided in the next section; but this section shall not be construed to impair, nor in any way to affect any of the rules of evidence now in force in regard to the maintenance and defence of the action.

Actual ouster when to be proved.

SEC. 23. If the action be brought by one or more tenants in common, or joint tenants against their co-tenants, the plaintiff, in addition to all other evidence which he may be bound to give, shall be required to prove, on the trial of the cause, that the defendant actually ousted such plaintiff, or did some other act amounting to a total denial of his right, as such co-tentant.

Verdict in certain cases.

SEC. 24. If the action be brought against several defendants, and a joint possession of all be proved, the plaintiff shall be entitled to a verdict against all, whether they shall have pleaded separately or jointly.

When plaintiff to elect if action against several.

SEC. 25. When the action is against several defendants, if it appear on the trial that any of them occupy distinct parcels in severalty or jointly, and that other defendants possess other parcels in severalty or jointly, the plaintiff shall elect, at the trial, against which he will proceed, which election shall be made before the testimony in the cause shall be deemed closed, and a verdict shall thereupon be rendered for the defendants not so proceeded against.

How verdict to be rendered.

SEC. 26. In the following cases, the verdict shall be rendered as follows:

1. If it be shown on the trial, that all the plaintiffs have a right to recover the possession of the premises, the verdict in that respect shall be for the plaintiffs generally:

2. If it appear that one or more of the plaintiffs have a right to the possession of the premises, and that one or more have not such right, the verdict shall specify for which plaintiff the jury find, and as to which plaintiff they find for the defendant:

3. If the verdict be for any plaintiff, and there be several defendants, the verdict shall be rendered against such of them as were in possession of the premises, or as claimed title thereto at the commencement of the action:

4. If the verdict be for all the premises claimed, as specified in the declaration, it shall in that respect be for such premises generally:

5. If the verdict be for a part of the premises described in such declaration, the verdict shall particularly specify such part as the same shall have been proved, with the same certainty herein before required in the declaration, in the description of the premises claimed:

6. If the verdict be for an undivided share or interest in the premises claimed, it shall specify such share or interest, and if for an undivided share in part of the premises claimed, it shall specify such share, and shall describe such part of the premises as herein before required:

7. The verdict shall also specify the estate which shall have been established on the trial by the plaintiff, in whose favor it shall be rendered, whether such estate be in fee for his own life, or for the life of another, stating such lives, or whether it be a term for years, and specifying the duration of such term.

Ib.

SEC. 27. If the right or title of a plaintiff in ejectment expire after the commencement of the suit, but before trial, the verdict shall be returned according to the fact, and judgment shall be entered that he recover his damages by reason of the withholding of the premises by the defendant to be assessed, and that as to the premises claimed, the defendant go thereof without day.

Action not to abate by death.

SEC. 28. The action of ejectment shall not be abated by the death of any plaintiff, or of one of several defendants, after issue and before verdict or judgment, but the same proceedings may be had as in other actions, to substitute the names of those who may succeed to the title of the plaintiff so dying, in which case the issue shall be tried as between the original parties, and in case of the death of a defendant, the cause shall proceed against the other defendants.

Judgment what to be in certain cases.

SEC. 29. In cases where no other provision is made, the judgment in the action, if the plaintiff prevail, shall be that the plaintiff recover the possession of the premises, according to the verdict of the jury, if there was such verdict, or if the judgment be by default, according to the description thereof in the declaration, with costs to be taxed.

Plaintiff when to have writ of possession.

SEC. 30. The plaintiff recovering judgment, shall be entitled to a writ of possession, which shall be substantially in the following form:

Form of writ.

"The State of Wisconsin, to the sheriff, &c.

"Whereas, A. B. has lately, in the circuit court held in and for the county of ———, by the judgment of the said court, recovered against C. D. one messuage, &c. (describing the premises recovered, with the like certainty as above provided,) which said premises have been and are still unjustly withheld from the said A. B. by the said C. D., whereof he is convicted as appears to us of record; and for as much as it is adjudged in the said court that the said A. B. have execution upon his said judgment against the said C. D,, according to the force, form and effect of his said recovery; therefore we command you, that without delay you deliver to the said A. B. possession of the said premises so recovered, with the appurtenances, and that you certify to &c., at &c., on &c., in what manner you shall have executed this writ. (If there be costs to be collected, the proper clause may be here inserted, or a separate execution may be issued therefor.) Witness, &c."

Execution how to issue for costs.

SEC. 31. Upon a judgment against a plaintiff, or one or more plaintiffs, in cases where they shall be liable for costs, execution for the collection of the same shall be issued, as upon judgments in personal actions, and the proceeding by attachment for the collection of such costs is hereby abolished.

Judgment rendered on verdict conclusive.

SEC. 32. Every judgment in the action of ejectment, rendered upon verdict, shall be conclusive as to the title established in such action, upon the party against whom the same is rendered and against all persons claiming from, through or under such party, by title accruing after the commencement of such action, subject to the exceptions hereinafter contained.

New trial to be granted.

SEC. 33. The court in which such judgment shall be rendered, at any time within one year thereafter, upon the application of the party against whom the same was rendered, his heirs or assigns, and upon payment of all costs and damages recovered thereby, shall vacate such judgment, and grant a new trial in such cause. But no more than one new trial shall be granted under this section.

When judgment by default conclusive.

SEC. 34. Every judgment in ejectment rendered by default, shall, from and after two years from the time of docketing the same, be conclusive upon the defendant, and upon all persons claiming from or through him by title accruing after the commencement of the action. But within two years after the docketing of such judgment, on the application of the defendant, his heirs or assigns, and upon payment of all costs and damages recovered thereby, the court shall vacate such judgment, and grant a new trial.

Limitation of previous section.

Sec. 35. But if the defendant in such action at the time of the docketing of the judgment by default, be either,

1. Within the age of twenty-one years: or,
2. Insane: or,
3. Imprisoned on any criminal charge, or in execution upon some conviction of a criminal offence for any term less than for life: or,
4. A married woman:

The time during which such disability shall continue shall not be deemed any portion of the said two years; but any such person may bring an action for the recovery of such premises after that time, and within two years after such disability shall be removed, but not after that period.

Further limitation.

Sec. 36. If the person entitled to commence such action shall die during the continuance of any disability specified in the preceding section, and no determination or judgment be had of or upon the title, right or action so to him accrued, his heirs may commence such action after the time above limited for that purpose, and within two years after his death.

Possession not affected by vacation of judgment.

Sec. 37. If the plaintiff shall have taken possession of the premises by virtue of any recovery in ejectment, such possession shall not in any way be affected by the vacating of any judgment as herein provided; and if the defendant recover in any new trial hereby authorized, he shall be entitled to a writ of possession in the same manner as if he was plaintiff.

What shown in bar of recovery.

Sec. 38. Upon any new trial granted as herein provided, the defendant may show any matters in bar of a recovery which he might show to entitle him to the possession of the premises if he were plaintiff in the action.

Damages may be recovered.

Sec. 39. The plaintiff recovering judgment in ejectment in any of the cases in which such action may be maintained, shall also be entitled to recover damages against the defendant for the rents and profits of the premises recovered. But if such action be brought for the recovery of the dower, the plaintiff shall be entitled to recover such damages as the court and jury may deem proper.

Proceedings to recover damages.

Sec. 40. Instead of the action of trespass for mesne profits, the plaintiff seeking to recover such damages shall, within one year after the docketing of the judgment, make and file a suggestion of such claim; which shall be entered, with the proceedings thereon, upon the record of such judgments, or be attached thereto as a continuation of the same.

Ib.

Sec. 41. Such suggestions shall be subtantially in the same form as is now in use, for a declaration in an action of assumpsit for use and occupation, as near as may be, and it shall be served on the defendant in the same manner herein before prescribed respecting the service of a declaration in ejectment; and a rule to plead thereto shall be entered, and notice thereof given in the same manner as upon declaration in personal actions.

What defendant may plead.

Sec. 42. The defendant may plead the general issue of non-assumpsit, and under such plea may give notice of, or may plead specially any matters in bar of such claim, except such as were or might have been controverted in such action of ejectment; but he may plead or give notice of a recovery by such defendant, or any other person of the same premises, or of part thereof, subsequent to the verdict in such action of ejectment, in bar or in mitigation of the damages claimed by the plaintiff.

Issues of fact, how tried, &c.

SEC. 43. If any issue of fact be joined on such suggestion, it shall be tried as in other cases, and if such issue be found for the plaintiff, the same jury shall assess his damages to the amount of the mesne profits received by the defendant since he entered into possession of the premises, subject to the restrictions hereinafter contained.

What plaintiff required to establish.

SEC. 44. On the trial of such issue the plaintiff shall be required to establish, and the defendant may controvert, the time when such defendant entered into possession of the premises, the time during which he enjoyed the mesne profits thereof, and the value of such profits, and the record of recovery in the action of ejectment shall not be evidence of such time.

Improvements may be set off.

SEC. 45. On such trial the defendant shall have the same right to set off permanent improvements made on the premises, to the amount of the plaintiff's claim as is now allowed by law. And in estimating the plaintiff's damages, the value of the use by the defendant of any improvements made by him, shall not be allowed to the plaintiff.

Time to recover rents, &c.

SEC. 46. The plaintiff shall not be entitled to recover the rents and profits of the land so recovered, for any longer term than six years.

Writ of inquiry, when issued.

SEC. 47. If no issue of fact be joined on such suggestion, or if judgment thereon be rendered against the defendant by default, on demurrer or otherwise, a writ of inquiry to assess the value of such mesne profits shall be issued, of the execution of which sufficient notice shall be given to the defendant or his attorney.

What plaintiff required to establish.

SEC. 48. Upon the execution of such writ, the plaintiff shall be required to establish the same matters herein before required in the case of an issue being joined, and the defendant may in like manner controvert the same, and make any set-off to which he shall be entitled, and the jury shall assess the damages in the same manner; the same proceedings shall be had on such writ, and it shall be returned as in other cases, with the inquisition taken thereon.

Judgment how rendered.

SEC. 49. Upon such inquisition, or upon the verdict of the jury in the case of an issue being joined, the court shall render judgment as in actions of assumpsit for use and occupation, which shall have the like effect in all respects.

Personal representatives may recover.

SEC. 50. If the plaintiff in ejectment shall have died after issue joined or judgment therein, his personal representatives may enter a suggestion of such death, of the granting letters testamentary, or of administration to them, and may suggest their claim to the mense profits of the premises recovered, in the same manner and with the like effect as the deceased might have, done, and the same proceedings in all respects shall be had thereon.

Dower, how assigned to widow.

SEC. 51. If the action be brought to recover the dower of any widow, which shall not have been admeasured to her before the commencement of such action, instead of a writ of possession being issued, such plaintiff shall proceed to have her dower assigned to her in manner following:

1. Upon the filing of the record of judgment, the court, upon the motion of the plaintiff, shall appoint three reputable and disinterested freeholders commissioners for the purpose of making admeasurement of the dower of the plaintiff out of the lands described in the record, and the commissioners so appointed shall proceed immediately to the discharge of their duties:

2. The report of the commissioners may be appealed from by any party to the action:

3. Upon the confirmation of the report of the commissioners, a writ of possession shall be issued to the sheriff of the proper county, describing the premises assigned for the dower, and commanding the sheriff to put the plaintiff in possession thereof.

Costs.

Sec. 52. The costs and expenses incurred in such admeasurement of dower, shall be subject to the order of the court.

When ejectment not to be maintained by mortgagee, &c.

Sec. 53. No action of ejectment shall hereafter be maintained by a mortgagee or his assigns or representatives, for the recovery of the possession of the mortgaged premises, until the equity of redemption shall have expired.

CHAPTER 107.

OF IMPROVEMENTS ON REAL ESTATE.

When writ of possession shall issue where jury find against a person claiming lands, &c.

Section 1. Whenever any person claims title to any lands, or town lots and tenements, under, through, or by virtue of any deed or conveyance heretofore executed, or hereafter to be executed, by any officer authorized by the laws of this state to execute the same, on account of any sale of any lands or town lots and tenements, for the payment of any tax heretofore or hereafter lawfully assessed thereon, or who shall claim title in fee simple, under or by virtue of a deed from any other officer or person, and a suit, to recover such lands and town lots or tenements, shall be instituted by any person claiming title from any other source, on the trial of such action, if the jury to whom the cause is submitted, shall find the plaintiff entitled to such lands and tenements so claimed, a writ of possession shall be awarded by the court, provided no permanent and valuable improvements have been made on such lands and tenements in good faith by the defendant, or those under whom he claims since the execution of such deed, or since the execution of a like deed to those from whom he claims as aforesaid, and before the commencement of said suit.

If defendant claim that he has made valuable improvements, issue to be made and tried.

Sec. 2. If the defendant in any such suit, against whom a verdict may be found, shall claim that he, or any person or persons through whom he claims title, has in good faith, since the execution of such deed or deeds, and before the commencement of said suit, made valuable and permanent improvements on the said lands or town lots, the court in which the said cause is tried, shall cause an issue to be made up between the parties forthwith, in which the defendant in the original suit shall be plaintiff, and the plaintiff in such suit defendant; and a jury shall be empannelled at such terms, or at such subsequent term as the court shall appoint, to try the issue so made up, and assess the value of said improvements; and if they find that the plaintiff is entitled to recover any sum for or on account of such improvements, judgment shall be rendered for such sum as they shall so assess and award.

If plaintiff pay value of improvements, &c., to have writ of possession.

SEC. 3. If the plaintiff in the original suit shall elect to pay the defendant in such suit the value of such improvements, as assessed by the jury, with interest thereon from the time of such assessment, and cost of the suit for the assessment of the value of such improvements, and all taxes assessed upon said premises, and paid by said defendant or those under whom he claims as aforesaid, with interest thereon, within three years after the assessment of such damages, and final judgment rendered thereon, the court shall upon satisfactory proof of the payment, or the tender of the payment of the same, award a writ of possession; and if the said plaintiff shall not pay or offer to pay the same within such time, he shall be deemed to have abandoned his claim of title to the premises in question, and he and all persons claiming under him, shall be forever barred of a recovery of the premises, so claimed, but shall, nevertheless, be liable for the costs of such suit, for the assessment of such improvements; and said defendant shall not be liable to pay for the use or occupation of said premises during the time any part of such sums shall remain unpaid.

When deemed to have abandoned his claim, &c.

CHAPTER 108.

OF THE PARTITION OF LANDS OWNED BY SEVERAL PERSONS.

Who may have partition.

SECTION 1. All persons holding lands as joint tenants, or tenants in coparceny or common, may have partition thereof, in the manner provided in this chapter.

Suits how instituted.

SEC. 2. Any one or more of the persons so holding lands, may institute a suit in the circuit court for the county in which the lands lie, by a bill in equity for a division and partion thereof according to the respective rights of the parties interested therein, and for a sale of such premises, if it shall appear that a partition thereof cannot be made without great prejudice to the owners.

By whom suit may be maintained.

SEC. 3. Such suit may be maintained by any person who has an estate in possession in the lands of which partition is sought, but not by one who has only an estate therein in remainder or reversion.

Bill to be verified and what to set forth.

SEC. 4. The bill for a partition or sale of any such lands, shall be verified by oath, and shall particularly describe the premises sought to be divided, and shall set forth the rights and titles of all persons interested therein, so far as the same are known to the complainant, including the interest of any tenant for years, for life, by the curtesy or in dower, and the persons entitled to the reversion, remainder or inheritance after the termination of any particular estate therein, and every person who, by any contingency contained in any devise, grant or otherwise, may be or become, entitled to any beneficial interest in the premises.

Who may be made parties.

SEC. 5. Every person having any such interest as aforesaid, whether in possession or otherwise, and every person entitled to dower in such premises, if the same has not been admeasured, may be made a party to such suit.

Unknown parties and uncertain interests.

SEC. 6. In case any one or more of such parties, or the share or quantity of interest of any of the parties be unknown to the complainant, or be uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be a contingent remainder, so that such parties cannot be named, the same shall be set forth in the bill.

Creditors having lien need not be made parties in first instance.

SEC. 7. It shall not be necessary in the first instance, to make any creditor having a lien on the premises in question, or any part thereof, by judgment, decree, mortgage or otherwise, a party to the proceedings, nor shall the partition of the premises alter, affect or impair the lien of any such creditor, except in the cases provided for in the next section.

Effect of partition upon lien on undivided share.

SEC. 8. When the lien is on the undivided interest or estate of any of the parties, such lien, if partition be made of the premises, shall thereafter be a charge only on the share assigned to such party, and such share shall be first charged with its just proportion of the costs of the proceedings in partition, in preference to any such lien.

Creditor having specific lien may be made a party.

SEC. 9. But the complainants may, at their election, make every creditor having a specific lien on the undivided interest or estate of any of the parties, by mortgage or otherwise, a party to the proceedings; and in such case the bill shall set forth the nature of every such lien or incumbrance.

Subpœna to appear and answer.

SEC. 10. Upon filing a bill in the circuit court, for the partition or sale of any lands pursuant to the provisions of this chapter, the defendants, or such of them as reside in this state and can be found therein, shall be served with a subpœna to appear and answer the bill, and the same may be taken as confessed, according to the practice in courts of equity.

Unknown and non-resident parties how notified.

SEC. 11. If any parties having an interest in such lands are unknown, or if either of the known parties reside out of this state, or cannot be found therein, and such facts be made to appear to the court by affidavit, an order may be made by the court, or judge thereof, containing a sufficient description of the premises whereof partition is sought, and requiring all parties interested to appear and answer the bill by a day in such order to be specified, which order shall be served personally, or shall be published once in each week successively in such paper as may be designated in such order, and for such time as the court shall designate, not exceeding three months.

Order to take bill as confessed against unknown parties.

SEC. 12. The proof of personal service, or of the publication of such order, shall authorize an order of the court for taking the bill as confessed against all such unknown parties, and persons not resident in this state, or not found therein, as shall not appear and answer by the day mentioned in the order, or on such further day as the court may appoint; and all such unknown parties as may appear shall be entitled to be made parties to the suit, and the bill may be amended accordingly.

Guardians for minors, &c.

SEC. 13. The general guardians residing in this state, of all minors and other persons under guardianship, who should be parties to such proceedings for partition, upon giving bond as hereinafter directed, shall represent their respective wards therein, whether such wards shall reside in or out of this state, and the court shall appoint guardians for all such minors who shall be interested in the premises, as have no general guardians in this state, for the special purpose of taking charge of the interests of such minors, in relation to the proceedings; and the acts of all such guardians of minors, or others under guardianship, shall be binding on their respective wards, and shall be as valid as if done by them respectively when of full age, or under no legal incapacity.

Bond to be given by guardian.

SEC. 14. Every such guardian shall give bond to the people of this state, to be filed with the clerk of the court, in such penalty, and with such surety as the court shall direct; conditioned for the faithful performance of the trust reposed in such guardian, and to render a just and true account of his guardianship in all courts and places when thereunto required, and for the observance of the orders of the court in relation to the said trust.

On failure of guardian to give bond, clerk to be appointed.

SEC. 15. When a bill shall be filed for the partition or sale of any lands in pursuance of this chapter, and any of the defendants therein are minors, or other persons under guardianship, and the general guardian, or person appointed guardian by the court, shall fail to give the security herein before required, it shall be the duty of the court, on the application of the complainants, to appoint the clerk of said court the guardian of such minors or other persons, for the purpose of such partition, and to dispense with the securities hereinbefore required.

When issue of fact to be tried by jury.

SEC. 16. Any defendant may deny the joint tenancy, or tenancy in common, of any co-defendant; and whenever the court shall deem it necessary, for the purpose of determining the rights of any of the parties in the premises of which partition shall be sought, that any issue of fact between the parties, or any of them, should be tried by a jury, such court may award a feigned issue for that purpose, which shall be tried by a jury, and the verdict thereon be returned as in other cases, and with the like effect.

Court may permit bill and proceedings to be amended.

SEC. 17. Either before or after the trial of such issue, the court may permit the bill and all subsequent proceedings to be amended so as to represent truly the rights claimed by any party; or so as to make any person a defendant who shall have appeared in the course of the proceedings to be interested in the premises, and who might originally have been made a defendant if his interest had then existed or been known; but no person shall be so made a defendant unless by his consent, without twenty days notice of the motion to that effect being personally served on him, or published once in each week successively for one month, in such paper as the court may direct.

Rights of parties affected by amendment.

SEC. 18. After any such amendment, any party whose rights are affected thereby, and who has not had an opportunity to sustain his claim, shall have the right to answer the bill, or to put in a further answer thereto, and to maintain his claim, as the circumstances of the case may render proper.

Reference to take proof of title of complainants.

Sec. 19. If the bill shall be taken as confessed by any of the defendants, whether known or unknown, the court shall take proof of the title of the complainants, and the complainants shall exhibit before such court proof of their title, and an abstract of the conveyances by which the same is held.

Rights of parties how ascertained and decree thereon.

Sec. 20. Upon the hearing of the cause, the court shall ascertain from the proofs so taken, in case of the bill being taken as confessed; or from the bill and answer, or pleadings and proofs, if the defendants appear and answer, and shall declare the rights, titles and interests of the parties to such proceedings, complainants as well as defendants, so far as the same shall have appeared; and shall determine the rights of the said parties in such lands, and shall decree that partition be made between such of them as shall have any right therein, according to such rights.

Decree in case the right of some of the parties do not appear.

Sec. 21. If upon the hearing of the cause, the part or interest of any parties who shall not have appeared and answered the bill, whether known or unknown, in and to such premises, shall not have appeared by the proofs in the cause, then the court shall decree that partition be made, so far as the rights or interests of the parties who are known, and who have appeared in the cause, have been ascertained, and the residue of the premises shall remain for the parties whose interests have not been ascertained, subject to division between them at any future time.

Reference to inquire into situation of the premises.

Sec. 22. Upon making a decree for partition as provided in the two last preceding sections, an order shall be entered referring it to a proper person to inquire into the situation of the premises, and to report whether such premises, or any part of them are so circumstanced that a partition and division thereof amongst the parties interested cannot be made without great prejudice to the owners.

When and how commissioners appointed to make partition.

Sec. 23. If upon the coming in of the report of such person the court shall be satisfied that partition of the premises between the parties interested therein can be made without prejudice to the owners, such court shall, by an order to be entered in its minutes, appoint three discreet and disinterested freeholders, commissioners, to make the partition so decreed, according to the respective rights and interests of the parties, as the same were ascertained and determined by such court, and in such order the court shall designate the part or shares, if any, which shall remain undivided, for the owners whose interests shall be unknown or ascertained.

Vacancies.

Sec. 24. If the persons so appointed commissioners, or either of them shall die, resign, or neglect to serve, the court may, from time to time, appoint others in their places.

Oath of commissioners.

Sec. 25. The commissioners, before proceeding to the execution of their duties, shall severally be sworn before any officer authorized to administer oaths, honestly and impartially to execute the trust reposed in them, and to make partition as directed by the court; which oath shall be filed with the clerk of the court, on or before the coming in of the report of such commissioners.

How partition to be made.

Sec. 26. In making partition, the commissioners shall divide the said real estate, and allot the several portions and shares thereof to the respective parties, quality and quantity relatively considered, according to the respective rights and interests of the parties so adjudged and decreed by the court, designating the several shares and portions by posts, stones or other permanent monuments; and they may, if necessary, employ a surveyor with the necessary assistants, to aid them therein.

Report of commissioners.

SEC. 27. The commissioners shall make an ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust, and describing the land divided, and the shares allotted to each party, with convenient certainty, and the items of their charges.

All to meet, &c.

SEC. 28. All the commissioners must meet together in the performance of any of their duties, but the acts of a majority so met, shall be valid.

Fees and expenses.

SEC. 29. The expenses of the commissioners, including the expenses of a surveyor and his assistants, when they shall be employed, shall be ascertained and allowed by the court; and the amount thereof, together with such compensation as shall be allowed to the commissioners by the court for their services, shall be paid by the complainants, and shall be allowed to them as part of the costs to be taxed.

Setting aside report, &c.

SEC. 30. On good cause shown, the court may set aside the report, and commit the case to the same, or appoint new commissioners, as often as may be necessary, who shall proceed in like manner as herein before directed.

Decree on confirmation of report.

SEC. 31. Upon the confirmation of the report of any commissioners by the court, a decree shall thereupon be entered, that such partition be firm and effectual forever, and such decree shall be binding and conclusive,

1. On all parties named therein, and their legal representatives, who shall, at the time, have any interest in the premises divided, as owners in fee, or as tenants for years, or as entitled to the reversion, remainder or inheritance of such premises, after the termination of any particular estate therein; or who, by any contingency contained in any will or grant, or otherwise, may be or become entitled to any beneficial interest in the premises; or who shall have any interest in any undivided share of the premises, as tenant for years, for life, by the curtesy, or in dower:

2. On all persons interested in the premises, who may be unknown, to whom notice shall have been given by personal service or by publishing the same as is herein before directed: and,

3. On all other persons claiming from such parties or persons, or either of them.

Persons and cases not affected.

SEC. 32. But such decree and partition shall not affect any tenants, or persons having claims as tenants, in dower, by the curtesy or for life, to the whole of the premises which shall be the subject of such partition; nor shall any such decree and partition preclude any person, except such as are specified in the last preceding section, from claiming any title to the premises in question, or from controverting the title or interest of the parties, between whom such partition shall be made.

When sale may be ordered.

SEC. 33. If the person to whom reference shall be made as herein before provided, shall report to the court that the lands or tenements of which division and partition is sought, are so situated, or that any distinct tract, lot or portion thereof, is so situated, that a partition and division thereof amongst the persons interested therein, cannot be made without great prejudice to the owners; and if the court shall be satisfied that such report is just and correct, the court may thereupon make an order that the sheriff sell the premises so situated, at public auction, to the highest bidder.

Order to direct terms of credit, &c.

Sec. 34. The court shall direct, in such order, the terms of credit which may be allowed, for any portions of the purchase money of which it shall think proper to direct the investment, and for such portions of such purchase money, as are required by the provisions hereinafter contained, to be invested for the benefit of any unknown owners, any infants, any parties out of the state, or any tenants for life, in dower, or by the curtesy.

Credits, how secured.

Sec. 35. The portions of the purchase money for which credit shall be allowed, shall always be secured at interest, by a mortgage of the premises sold, by a bond of the purchaser, and by such other security as the court shall prescribe.

Separate securities.

Sec. 36. The sheriff may take separate mortgages and other securities, for such convenient shares or portions of the purchase money, as are directed by the court to be invested, in the name of the clerk of the court in whose office the original bill for a partition was filed, and his successors in office; and for such shares as any known owner of full age shall desire to have so invested, in the name of such owner.

To whom to be delivered.

Sec. 37. Upon such sales being confirmed, as hereinafter mentioned, the said sheriff shall deliver such mortgages and other securities, to the clerk of the court, or to the known owners whose shares were so invested.

Creditors having specific liens to be made parties before order for sale.

Sec. 38. Before making any order for the sale of the said premises, where the creditors having specific liens shall not have been made parties, the court shall direct the complainant to amend his bill, by making every creditor having a specific lien on the undivided interest or estate of any of the parties, by mortgage or otherwise, a party to the proceedings.

Certain moneys to be brought into court.

Sec. 39. If it shall appear by the proceedings on such bill, or by such report, that there are any existing incumbrances upon the estate or interest in the premises, of any party named in the proceedings in the suit, the court shall, in the order of sale, direct the sheriff to bring into court and pay to the clerk, the portion of the moneys arising from the sale of the estate and interest of such party, after deducting the portion of the costs, charges and expenses to which it shall be liable.

Application for moneys brought in.

Sec. 40. Such party may apply to the court to order such moneys, or such part thereof as he shall claim, to be paid to him; which application shall be accompanied,

1. By his own affidavit, stating the true amount actually due on each incumbrance, the owner of such incumbrance, and his residence, as far as known to such party:

2. By proof by affidavit, of the due service of a notice on each owner of any incumbrance, of the intention to make such application, at least fourteen days previously. If such owner reside in this state, such notice shall be served personally, or if he be absent from his residence, by leaving a copy there, with some person of

his household of proper age. If such owner reside out of this state, such notice may be served on him personally, thirty days previously, or by publishing the same in such paper as the court may direct, three weeks successively, once in each week.

Proceedings on application.

SEC. 41. Upon such application and proof of notice, the court shall proceed to hear the proofs and allegations of the parties; and if any question of fact shall arise, which, in the opinion of the court, cannot be satisfactorily determined without a trial by jury, the court shall award a feigned issue, to be tried as in other cases, and the costs of such trial shall be paid by the party failing, which payment shall be enforced by attachment, as in other cases.

Distribution of moneys among creditors.

SEC. 42. When the amount of existing incumbrances shall have been ascertained, the court shall proceed to order a distribution of the moneys so brought into and remaining in court, among the several creditors having such incumbrances, according to the priority thereof respectively.

Clerk to procure discharge of incumbrances.

SEC. 43. The clerk of the court by whom any such incumbrance shall be paid off, shall procure satisfaction thereof to be acknowledged, in the form required by law, and shall cause such incumbrance to be duly satisfied or canceled of record, and shall defray the expenses thereof, out of the portion of the moneys in court belonging to the party by whom such incumbrance was payable.

Other parties not to be delayed

SEC. 44. The proceedings to ascertain and settle the amount of incumbrances as herein provided, shall not affect any other party in such suit for partition, nor delay the paying over or investing the moneys to or for the benefit of any party, upon whose estate in the premises there shall not appear to be any existing incumbrances.

Sale of dower or other life estate in premises.

SEC. 45. Whenever the estate of any tenant in dower, or by the curtesy or for life, in the whole or any part or share of the premises in question, has been admitted by the parties, or ascertained by the court, to be existing at the time of the order for such sale, and the person entitled to such estate has been made a party to the proceedings, the court shall first consider and determine under all the circumstances of the case, whether such estate ought to be excepted from such sale, or whether the same should be sold, and in making such determination, regard shall be had to the interests of all parties.

Ib.

SEC. 46. If a sale of the premises, including such estate shall be ordered, the estate and interest of every such tenant or person, shall pass thereby, and the purchaser, his heirs and assigns, shall hold such premises free and discharged from all claims by virtue of any such estate or interest, whether the same be to any undivided share of a joint tenant, or tenant in common, or to the whole or any part of the premises sold.

Payment to owner of life estate, &c., with his assent.

SEC. 47. Upon such sale being made of any such interest or estate, the court shall direct the payment of such sum in gross, out of the proceeds thereof, to the person entitled to such estate in dower, tenancy by the curtesy, or tenancy for life, as shall be deemed upon the principles of law applicable to annuities, a reasonable satisfaction for such estate or interest, and which the person so entitled shall consent to accept in lieu thereof, by an instrument under seal, duly acknowledged or proved in the manner that deeds are required to be acknowledged or proved, to entitle them to be recorded.

Proceedings if consent be not given.

Sec. 48. In case no such consent is given at or before the coming in of the report of sale by the sheriff, then the court shall ascertain and determine what proportion of the proceeds of such sale, after deducting all expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate or interest in dower, by the curtesy or for life, and shall order the same to be brought into court for that purpose.

Proportions to be invested, how ascertained.

Sec. 49. The proportions of the proceeds of such sale to be invested, shall be ascertained and determined, in the several cases, as follows:

In case of dower.

1. If an estate in dower shall have been included in such order of sale, its proportion shall be one-third of the proceeds of the sale of the premises, or of the sale of the undivided share in such premises, upon which such claim of dower existed:

Estate for life.

2. If an estate by the curtesy, or other estate for life, shall be included in the order of sale, its proportion shall be the whole proceeds of the sale of the premises, or of the sale of the undivided share thereof, in which such estate shall be:

And in all cases, the proportion of the expenses of the proceedings shall be deducted from the proceeds of such sale.

Rights of unknown owners to be protected by court.

Sec. 50. If the persons entitled to any such estate in dower, by the curtesy or for life, be unknown, the court shall take order for the protection of the rights of such persons, in the same manner, as far as may be, as if they were known and had appeared.

Notice of sale by sheriff.

Sec. 51. The sheriff shall give notice of any sale to be made by him, for the same time, and in the same manner as is required by law on sales of real estate by sheriffs on execution.

How conducted.

Sec. 52. The terms of such sale shall be made known at the time, and if the premises consist of distinct lots, tracts or parcels, they shall be sold separately.

Sheriff and guardians not to purchase.

Sec. 53. No such sheriff, nor any person for his benefit, shall be interested in the purchase, nor directly or indirectly purchase any of the premises sold; nor shall any guardian of any infant party in such suit, purchase, or be interested in the purchase of any lands being the subject of such suit, except for the benefit or in behalf of such infant; and all sales contrary to the provisions of this section shall be void.

Report of sale.

Sec. 54. After completing such sale the sheriff shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of such purchaser, and the price bid by him, which report shall be filed in the court.

Order for conveyances.

Sec. 55. If such sales be approved and confirmed by the court, an order shall be entered directing the sheriff to execute conveyances pursuant to such sales; which such sheriff shall be authorized to do upon the entry of such order.

Conveyances to be recorded; their effect.

Sec. 56. Such conveyances so executed shall be recorded in the county where the premises are situated, and shall be a bar, both in law and equity, against all persons interested in any way, who shall have been named as parties in the said proceedings, and against all such parties as were unknown, if notice of the order to appear and answer shall have been given by such publication or service of notice as is herein before directed, and against all other persons claiming from such parties, or either of them.

Effect of conveyances upon rights of creditors.

SEC. 57. Such conveyances shall also be a bar against all persons having specific liens on any undivided share or interest therein, who shall have been made parties to the proceedings; but no creditor having any such specific lien shall be affected by such sale or conveyance, unless he shall have been made a party to the proceedings.

Costs and expenses of proceedings.

SEC. 58. The costs and expenses of the proceedings shall be deducted from the proceeds of every sale made by the sheriff, and shall be by him in the first instance paid to the complainants or their solicitor.

Distribution of proceeds of sale among parties.

SEC. 59. The proceeds of every sale, after deducting the costs, shall be divided among the parties whose rights and interests shall have been sold, in proportion to their respective rights in the premises; and the shares of such of the said parties as are of full age shall be paid to them or their legal representatives by the sheriff, or shall be brought into court for their use.

Shares of known infants.

SEC. 60. When any of such known parties are infants, the court may in its discretion, direct the shares of such infant to be paid over to the general guardian, or to be invested in permanent securities at interest, in the name and for the benefit of such infant.

Shares of unknown and absent owners

SEC. 61. Where any of the parties whose interests have been sold are absent from the state, without legal representatives in this state, or are not known or named in the proceedings, the court shall direct the shares of such parties to be invested in permanent securities at interest, for the benefit of such parties, until claimed by them or their legal representatives.

Tenants in dower or for life, &c.

SEC. 62. Where the proceeds of a sale belonging to any tenant in dower, or by the curtesy, or for life, shall be brought into court as hereinbefore directed, the court shall direct the same to be invested in permanent securities at interest, so that such interest shall annually be paid to the parties entitled to such estate, during their lives respectively.

Security to refund.

SEC. 63. The court may, in its discretion, require all or any of the parties, before they shall receive any share of the moneys arising from such sales, to give security to the satisfaction of such court to refund the said share, with interest thereon, in case it shall thereafter appear that such party was not entitled thereto.

In what names securities to be taken.

SEC. 64. When any security is directed to be taken by the court, or any investment to be made, or any security shall be taken by a sheriff, on the sale of any real estate as hereinbefore directed, except where provision shall be made for taking the same in the name of any known owner, the bonds, mortgages, or other evidences thereof shall be taken in the name of the clerk of the court in whose office the original bill was filed, and his successors in office, who shall hold the same by virtue of his office, and shall deliver them to his successor.

Clerk to receive and apply moneys and render account.

SEC. 65. Such clerk shall receive the interest or principal of any sums as they become due, and apply or re-invest the same, according to the circumstances of the case, as the court shall direct; and shall, once in every year, render to the court an account in writing and on oath, of all moneys received by him, and of the application thereof.

Investment, how made, &c.

SEC. 66. All investments, or re-investments, under the provisions of this chapter, shall be made on bond and mortgage upon unincumbered real estate, of at least double the value of such investment, exclusive of buildings, or in other equivalent security; and no such security, bond, mortgage, or other evidence of such investment, shall be discharged, transferred, or impaired, by any act of the clerk, without the order of the court entered in the minutes thereof.

Suits on securities.

SEC. 67. Any person interested in such investment may, with the leave of the court, prosecute the same in the name of the existing clerk, and no suit shall be abated by the death, removal from office, or resignation of the clerk to whom such securities or evidences were executed, or of any of his successors.

Costs of partition how assessed and collected.

SEC. 68. When a decree confirming the partition made by any commissioners, shall be entered as provided in this chapter, the court shall also adjudge and decree that each of the parties concerned therein, other than the complainants, pay to such complainants a proportion of the costs and charges of the proceedings, to be ascertained by the court, according to the respective rights of the parties, and the proportion of such costs and charges assessed upon the unknown owners, to be chargeable on the part remaining undivided; and upon such decree execution may issue as in other cases, and may be levied on the property of the parties respectively charged with such costs, and upon any share or part of the premises allotted on any such division to any owner unknown, or not named, and upon every portion remaining undivided, for the proportion adjudged to be paid by such owners, or chargeable to the part remaining undivided.

Sale of premises of unknown owner valid.

SEC. 69. A sale of the premises of such owner unknown, upon such execution, shall be as valid as if such owner had been named in the proceedings, and in such execution.

Costs against complainants on dismissal of bill, &c.

SEC. 70. If a bill for partition shall be dismissed, or the suit shall be discontinued, the complainants shall pay costs, to be collected as in other cases.

Appeal.

SEC. 71. Any of the parties to a suit for the partition or sale of any premises under the provisions of this chapter, and any party interested in the premises, though not named in the proceedings, may, jointly or separately, and without the consent of any co-complainant or co-defendant, appeal from any decree or order of the said court, upon any such proceedings, within the same time, and under the like regulations as in other cases.

Partition or sale of estates of infants by guardians.

SEC. 72. Whenever it shall appear satisfactorily to the court, by due proof, that any infant holds real estate in joint tenancy, or in common, or in any other manner which would authorize his being made a party to a suit in partition, and that the interest of such infant, or of any other person concerned therein, requires that partition of such estate should be made, such court may direct and authorize the general guardian of such infant to agree to a division thereof, or to a sale of such premises, or of such part thereof, as in the opinion of the court shall be incapable of partition, or as shall be most for the interest of such infant to be sold.

Report of guardian and order for conveyances.

SEC. 73. Such guardian shall report to the court, on oath, the partition or sale so made by him, and if the same be approved and confirmed by the court, an order shall be entered authorizing such guardian to execute conveyances of the right of such infant to such part of the said estate as shall have been sold, to the purchaser thereof; or to execute releases of the rights of such infant to such part of the said estate, as in the division falls to the shares of the other joint tenants, or tenants in common.

Effect of deeds, infants wards of court.

SEC. 74. Such deeds shall be as valid and effectual to convey the share and interest of such infant, as if the same had been executed and duly acknowledged by such infant after arriving at full age; and in case of the sale of any part of such estate, the infant shall be deemed a ward of the court, and such order shall be taken as the court may direct, for securing, investing and applying the proceeds of the sale, and for requiring security from the guardian for that purpose.

If infant a married woman, husband to be guardian

SEC. 75. Whenever such infant shall be a married woman, the court may, upon petition, appoint her husband as her guardian, and in case of the appointment of the husband, the provisions of the three last preceding sections shall apply to such husband.

Partition by guardians of lunatics, &c.

SEC. 76. Whenever it shall appear to the court, on the application of the guardian of any idiot, lunatic, spendthrift, or person mentally incapable of managing his affairs, holding any estate in joint tenancy or in common, or in any other manner to authorize his being made a party to a suit in partition, that the interest of such idiot, lunatic, or other person aforesaid, or of any of the parties interested in such estate, requires a partition thereof, it shall be referred to some proper person to inquire into and report upon the circumstances.

Releases, when to be authorized.

SEC. 77. Upon the coming in of the report, and a hearing and examination of the matter, the court may authorize such guardian to agree to a partition of such estate, and to execute releases of the right of such idiot, lunatic, or other person as aforesaid, in and to the shares of such estate falling to the other joint tenants, or tenants in common.

Effect of releases.

SEC. 78. Such releases shall be as valid and effectual to convey the share of such idiot, lunatic or other person as aforesaid, as if the same had been executed by them respectively, when of sound mind and understanding, and not subject to guardianship, and for a valuable consideration.

Partition when state is interested.

SEC. 79. When any lands shall be held by the people of this state, and by individuals as tenants in common, proceedings for the partition thereof may be had against the people of this state, in the circuit court, in the same manner as against individuals, and the like orders and decrees shall be had therein, and the proportion of the costs and expenses of such partition, adjudged to be paid by the people of this state, shall be certified by the attorney general, and paid out of the state treasury, on the warrant of the secretary of state.

Service of subpœna &c , on attorney general

SEC. 80. The subpœna to answer, and all notices required to be served in other cases, shall be served on the attorney general, who shall appear in behalf of the state, and attend to its interests.

Sec. 81. The authority given by this chapter to proceed for the partition of real estate, shall not authorize the revival or prosecution of any claim to lands which would, or otherwise might be barred by the statute of limitations, or by the acquiescence of any party having any such claim.

Claims barred by limitations, &c.

Sec. 82. Whenever partition shall be decreed by any circuit court, if it shall appear that it cannot be made equal between the parties, without prejudice to the rights and interests of some of them, the court may decree compensation to be made by one party to the other, for equality of partition, according to the equity of the case.

Compensation for equality of partition.

CHAPTER 109.

OF WASTE.

Section 1. If any guardian, or any tenant by the curtesy, tenant in dower, or for a term of life or years, or the assigns of any such tenant, shall commit or suffer any waste during their several terms or estates, of the houses, gardens, orchards, lands or woods, or of any other thing belonging to the tenements so held, without having a lawful license in writing so to do, they shall respectively be liable to an action on the case for such waste.

Who liable to action for waste.

Sec. 2. In case any such tenant shall let or grant his estate, and still retain possession thereof, and commit waste, the party entitled to the reversion of the tenements, may maintain his action on the case for such waste against such tenant.

When tenant liable after granting his estate.

Sec. 3 If one joint tenant, or tenant in common, shall commit waste of the estate held in joint tenancy or in common, he shall be subject to an action on the case for such waste, at the suit of his co-tenant or co-tenants.

Joint tenants and tenants in common.

Sec. 4. An heir, whether of full age or not, after coming into possession of the inheritance, may maintain an action on the case for waste done in the time of his ancestor, as well as in his own time, unless a recovery shall have been had therefor by the executor or administrator of such ancestor.

Suit by heirs.

Sec. 5. Such action may be brought by the person having the next immediate estate, in fee, or for life or years in the premises in question; or by any person who has the remainder or reversion in fee, or for life, after an intervening estate for life or years, and each of them shall recover damages according to his estate in the premises.

By whom action may be brought.

Sec. 6. If the plaintiff in such action prevail therein, he shall have judgment for double the amount of damages found by the jury.

Judgment.

Sec. 7. After the commencement of any action on the case for waste, or of any action for the recovery of land, or of the possession of land, the defendant shall not make any waste of the land in demand or premises in question, during the pendency of the suit; and if such defendant shall commit any waste thereon, or shall threaten

Staying the commission of waste by defendants.

or make preparations to commit waste thereon, the court in which the suit is pending, or any judge of the supreme court, or judge of any court of record, either in term time or vacation, shall have power, on the application of the plaintiff, to make an order restraining the defendant from the commission of any waste, or further waste thereon.

Staying waste after attachment or execution levied.

SEC. 8. If any person shall commit, or threaten, or make preparations to commit any waste on any real estate which shall be attached, or levied upon by execution in any civil action, the court from which such execution or attachment shall have issued, or any one of the justices of the supreme court, or a judge of any court of record shall, on the application of the plaintiff, either in term time or vacation, make an order restraining such person from committing any waste, or further waste thereon.

Action for waste of lands sold by execution.

SEC. 9. Whenever any lands or tenements shall be sold by virtue of an execution, issued upon any judgment or decree, or by virtue of a power of sale in a mortgage, the person to whom a certificate of sale may be executed by the sheriff pursuant to such sale, may maintain an action on the case for waste against any person, for any waste committed by such person on the premises after such sale.

Exception.

SEC. 10. But no person lawfully entitled to the possession of any premises so sold, shall be liable to any such action for doing either of the acts authorized in the next section.

Certain acts not waste.

SEC. 11. Any person entitled to the possession of lands or tenements sold under execution, or by virtue of a power of sale in a mortgage, may, until the expiration of twenty-seven months from the time of such sale, use and enjoy the same, as follows, without being deemed guilty of waste:

1. He may, in all cases, use and enjoy the premises sold, in like manner, and for the like purposes, in and for which they were used and applied prior to such sale, doing no permanent injury to the freehold:

2. If the premises sold were buildings, or any other erections, he may make necessary repairs thereto, but he shall make no alterations in the form or structure thereof:

3. If the premises sold were land, he may use and improve the same, in the ordinary course of husbandry or mining; and he shall be entitled to any crops growing thereon at the expiration of two years after sale:

4. He may apply any wood or timber on such land to the necessary reparation of any fences, buildings or erections which may have been thereon at the time of such sale:

5. If the land sold is actually occupied by such person, he may take necessary firewood therefrom for the use of his family.

Violation of order, how punished.

SEC. 12. If the person against whom any order shall be made to restrain waste, as provided in this chapter, shall, after the service of a copy thereof, commit any waste in violation of the said order, he shall be liable to be proceeded against and punished in the same manner as for a violation of an injunction to stay waste, according to the proceedings of courts of equity; and for that purpose the court or judge making such order, shall possess full equity power and jurisdiction.

Notice to show cause.

Sec. 13. When complaint shall be made of the violation of any such order to restrain waste, the court or judge may order notice to be given to the person complained of, to show cause why he should not be committed.

Form of commitment.

Sec. 14. Upon satisfactory proof of such violation, such court or judge shall issue a warrant to the sheriff of the county, reciting such order and the violation thereof, and thereby commanding such sheriff to commit such person to close confinement, for such term of time, not more than one year, as shall be deemed expedient.

How warrant to be executed.

Sec. 15. The sheriff shall execute such warrant accordingly, and shall commit the person named therein, without allowing him the liberties of the jail.

When defendant may be discharged.

Sec. 16. Such warrant may be superseded, and such person may be discharged by the court or judge committing him, upon receiving a bond, in such penalty, and with such sufficient sureties, as such court or judge may approve, to the person applying for the warrant of commitment, conditioned that such prisoner shall not commit any waste on such premises; which bond shall be delivered to such applicant for his use, and to be prosecuted by him for any breach of the condition thereof.

Equity jurisdiction of circuit court.

Sec. 17. The circuit court for each county shall have equity jurisdiction of all matters concerning waste, in which there is not a plain, adequate and complete remedy at law; and may grant injunctions to stay or prevent waste; and whenever it shall be necessary or proper to have any fact tried by a jury, such court may award a feigned issue for that purpose, as in other cases.

CHAPTER 110.

OF ACTIONS FOR PRIVATE NUISANCES.

Judgment in action for nuisance.

Section 1. In actions on the case for a private nuisance, when the plaintiff prevails, he shall, in addition to the usual judgment for damages and costs, also have judgment that the nuisance he abated and removed, unless the court before whom any issue of fact joined therein shall be tried, shall certify in the minutes of such trial, that the abatement thereof is unnecessary.

Execution and warrant in case of judgment that nuisance be abated.

Sec. 2. In case of a judgment that the nuisance be abated and removed, the plaintiff shall have execution in the common form for his damages and costs, and a separate warrant to the proper officer, requiring him to abate and remove the nuisance, at the expense of the defendant, in like manner as public and common nuisances are abated and removed.

How warrant may be stayed

Sec. 3. The court may, on the application of the defendant, order a stay of such warrant for such time as may be necessary, not exceeding six months, to give him an opportunity to remove the nuisance, upon his giving satisfactory security to do so within the time specified in the order.

Expense of removing nuisance on warrant how collected.

SEC. 4. The expense of abating and removing the nuisance pursuant to such warrant, shall be collected by the officer, in the same manner as damages and costs are collected upon execution, excepting that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be sold by the officer, in like manner as goods are sold on execution for the payment of debts; and the officer may apply the proceeds of such sale to defray the expenses of the removal, and shall pay over the balance thereof, if any, to the defendant upon demand; and if the proceeds of the sale are not sufficient to defray the said expenses, he shall collect the residue thereof as before provided.

Equity jurisdiction in case of nuisance, &c.

SEC. 5. The circuit court for any county shall have equity juristiction in all matters concerning nuisances, where there is not a plain, adequate and complete remedy at law, and may grant injunctions to stay or prevent nuisances.

CHAPTER 111.

GENERAL PROVISIONS CONCERNING ACTIONS RELATING TO REAL ESTATE.

Reversioners, &c , when to be admitted to defend.

SECTION 1. If any tenant for life, in dower, or by curtesy, or any tenant for years be impleaded, and the person to whom the reversion or remainder appertains, shall come into court before any trial shall be had in such action, or before judgment by default therein, and pray to be received to defend his right, he shall be received for that purpose, and shall be permitted to plead to the action upon such terms as the court may deem just.

When to sue after default of tenant.

SEC. 2. If any tenant for life or years, make default or give up any lands demanded, so that judgment be given on such default or surrender, the person to whom the reversion or remainder of such lands appertains, may, after the termination of the estate of such tenant, have an action of ejectment to recover the same lands.

When wife to be admitted to defend.

SEC. 3. When a husband and wife shall be impleaded, if the husband absent himself, or will not defend the rights of the wife, if she apply before judgment, she shall be admitted by the court to defend without her husband.

Wife may recover after default of husband.

SEC. 4. If the husband lose by default, any land which was the right of his wife, the wife, after the death of her husband, may have an action of ejectment to recover the same, and the judgment by default shall be no bar to such action.

Certain recoveries void as to reversioners, &c.

SEC. 5. All recoveries had by agreement of parties, or by fraud, against any tenant for life, in dower or by the curtesy, of any lands, tenements or hereditaments, shall be void as against all persons to whom any reversion or remainder of such lands shall appertain, and as against their heirs, unless the appearance of the person having such reversion or remainder shall have been duly entered in the court where such recovery shall be had.

Feigned recoveries.

SEC. 6. No execution shall be avoided by means of any feigned recovery, but all persons entitled to have execution of the lands, tenements or hereditaments, shall have the like means to avoid and falsify the same recoveries, as a tenant of the freehold, who was neither party nor privy to such recovery, has by the course of the common law.

Rights of lessees for years.

Sec. 7. A lessee for years may falsify for his term only, recoveries, in the same manner as a tenant of the freehold, who was neither party nor privy to the recovery, may do by the course of the common law; and such lessees, and their personal representatives and assigns, notwithstanding any recoveries that may be so falsified, shall hold their terms according to their demises, as if such recovery had not been had.

Rights of parties recovering.

Sec. 8. After any recovery had, the recoverers, their heirs and assigns, shall have the like remedies against any lessees for years, their representatives and assigns, for any rents or services reserved, coming due after such recoveries, and also like actions for waste done after such recoveries, as the lessors might have had, if such recoveries had not been made

Joint and several actions by heirs, &c.

Sec. 9. When any person shall die, leaving heirs either in the same or in different degrees; and where several persons shall be, in any other way, entitled to real estate as tenants in common, or as joint tenants, they may bring a joint action for the recovery thereof, or may bring several actions for their respective shares or interests.

Guardians for infant defendants.

Sec. 10. Actions relating to real property, shall not be delayed; nor shall the remedy of any plaintiff be superseded, by reason of the infancy of any defendant therein; but guardians to defend the rights of infant defendants, shall be appointed as in personal actions; and in all such actions against an infant, if he do not procure the appointment of a guardian within the time required for his appearance therein, the plaintiff may proceed to have such guardian appointed as in personal actions.

Order for survey of lands.

Sec. 11. Whenever the court in which any action relating to real property shall be pending, shall be satisfied that any survey of any premises in the possession of either party, or of any boundary line between the lands of the parties, or between the lands of either of them and the lands of other persons, is necessary or expedient to enable either party to declare, plead or prepare for trial, or for any other proceeding in such action, it may, by rule of court, upon the application of either party, order that such party have leave to make such survey.

Copy of order to be served.

Sec. 12. Such order shall specify the premises or boundary line to be surveyed, by a description, as definite as may be; and a copy of the same shall be served previous to such entry, on the owner or occupant of the premises upon which it may be necessary to enter, to make such survey.

Authority of party under order.

Sec. 13. The party obtaining such order, his necessary surveyors, assistants and agents, may enter upon any premises necessary for the purpose of making such survey, and may there make the same, after having served a copy of such rule, as hereinbefore directed; and for so doing, no person acting under such order shall be liable to any action of trespass or other action; but every such person shall be responsible in an action on the case, for any unnecessary injury caused by him.

Imparlance, &c., abolished. Landlords, &c. may defend.

SEC. 14. No imparlance, voucher, aid-prayer or receipt, shall be allowed; but whenever any action shall be brought against any tenant, to recover the land held by him, or the possession of such land, the landlord of such tenant, and any person having any privity of estate with such tenant, or with such landlord, in the premises in question, or in any part thereof, may be made defendant, with such tenant, in case he shall appear for that purpose.

Alienation by defendants.

SEC. 15. Whenever any action for the recovery of any lands or tenements, or for the recovery of the possession thereof, shall be commenced against any person in possession of the premises in question, or in the receipt of the profits thereof, such action shall not be barred or delayed by reason of any alienation or conveyance made by such person to any other, either before or after the commencement of such action.

Liability of purchasers during suit.

SEC. 16. If the defendant in any action for the recovery of land, or the possession of land, shall alien the land in question, pending the suit, and shall have no property whereof the damages for the issues and profits of such land recovered against him may be levied, every person to whose hands such land shall have come, shall be liable to an action for such damages for the time that he shall have possessed the premises.

Execution for costs or damages.

SEC. 17. Whenever a writ of possession shall be issued upon a judgment in any action relating to real property, the plaintiff may include in the same process, an execution against the property of the defendant, to collect the costs or damages, which may be due, in the same cases in which he would be authorized to issue such execution separately.

Practice in actions relating to real estate.

SEC. 18. The practice in actions relating to real estate, shall be the same in all respects, as in personal actions, except where otherwise specially provided by law; and rules to plead may be entered, and may be enlarged, and proceedings may be stayed in the like cases, and all the provisions of law respecting pleadings, process, records and judgments, in personal actions, shall, so far as the nature of such actions will admit, apply to actions relating to real estate.

Certain actions and process abolished.

SEC. 19. All writs of right, writs of dower, writs of entry, and writs of assize, all fines and common recoveries, and all other real actions known to the common law, not enumerated and retained in this title, and all writs and other process heretofore used in real actions, which are not specially retained in this title, are abolished.

TITLE XXV.

OF PROCEEDINGS IN SPECIAL CASES.

CHAPTER 112. Of proceedings against debtors by attachment.
113. Of proceedings by and against corporations in courts of law.
114. Of proceedings against corporations in chancery.
115. Of proceedings as for contempts, to enforce civil remedies, and to protect the rights of parties in civil actions.
116. Of proceedings for the collection of demands against boats and vessels.
117. Of forcible entries and unlawful detainers.
118. Of actions by persons holding claims on United States lands.
119. Of the action of replevin.
120. Of the lien of mechanics and others.
121. Of the foreclosure of mortgages by advertisement.
122. Of the collection of penalties, forfeitures and fines.
123. Of proceedings to compel the delivery of books and papers by public officers to their successors.

CHAPTER 112.

OF PROCEEDINGS AGAINST DEBTORS BY ATTACHMENT.

In what cases creditor may proceed by attachment

SECTION 1. Any creditor shall be entitled to proceed by attachment in the circuit or county court for the proper county, against the property of his debtor, in the cases, upon the conditions, and in the manner provided in this chapter.

Contents of affidavit to be annexed to writ.

SEC. 2. Before any such writ of attachment shall be executed, the plaintiff, or some person in his behalf, shall make and annex thereto an affidavit, stating that the defendant therein is indebted to the plaintiff, and specifying the amount of such indebtedness as near as may be, over and above all legal set-offs, and that the same is due upon contract express or implied, or upon judgment or decree, and containing a further statement that the deponent knows, or has good reason to believe, either,

1. That the defendant has absconded, or is about to abscond from this state, or that he is concealed therein to the injury of his creditors: or,

2. That the defendant has assigned, disposed of or concealed, or is about to assign, dispose of or conceal any of his property, with intent to defraud his creditors: or,

3. That the defendant has removed, or is about to remove, any of his property out of this state, with intent to defraud his creditors: or,

4. That he fraudulently contracted the debt, or incurred the obligation respecting which the suit is brought: or,

5. That the defendant is not a resident of this state: or,

6. That the defendant is a foreign corporation; or,

7. That the defendant has fraudulently conveyed or disposed of his property, or a part of it, or is about fraudulently to convey or dispose of the same, or a part of it, with intent to defraud his creditors.

Writ not to issue unless one hundred dollars due.

SEC. 3. No writ of attachment shall be issued under the provisions of this chapter, unless the amount stated in such affidavit as due to the plaintiff, over and above all legal set-offs, shall exceed the sum of one hundred dollars.

Contents of writ.

SEC. 4. Such writ shall command the sheriff, or other officer to whom it may be directed, to attach so much of the lands, tenements, goods, chattels, moneys and effects of the defendant, not exempt from execution, wheresoever the same may be found within the county, as will be sufficient to satisfy the plaintiff's demand, and safely keep the same, to satisfy any judgment that may be recovered by the plaintiff in such attachment, and also to summon the defendant, if to be found within this state, to appear before the court, at the time and place to be specified in such writ, to answer the plaintiff; and such writ shall be tested and made returnable in the same manner as other writs issuing out of the court.

How writ executed.

SEC. 5. The sheriff or other officer to whom such writ shall be directed, shall execute the same on or before the return day thereof, by seizing so much of the lands, tenements, goods and chattels, moneys and effects of the defendant, wheresoever the same may be found in the county, as will be sufficient to satisfy the demand and costs, and by making an inventory thereof, and serving a copy of such attachment and inventory, certified by him, upon the defendant, if he can be found within the county.

Appraisement of property attached.

SEC. 6. All the property so attached, shall be appraised by two disinterested freeholders, who shall be first sworn by the officer to make a true appraisement thereof; which appraisement shall be signed by such freeholders and returned with the writ; but in case the property attached shall be situated in several counties, that portion thereof in each of such counties may be separately appraised by two disinterested freeholders thereof, who shall be sworn, and whose appraisement shall be signed by them, and returned as aforesaid.

Not necessary to enter upon land.

SEC. 7. In attaching real estate, or any right or interest in land, it shall not be necessary that the officer should enter upon the land, or be within view of it.

Attachment to bind goods and chattels.

SEC. 8. Such attachment shall bind the goods and chattels so attached from the time they were attached.

When real estate bound by attachment.

SEC 9. Real estate shall be bound, and the attachment shall be a lien thereon from the time when it was attached, if a certified copy of the attachment, with a description of such real estate, shall be deposited in the office of the register of deeds in the county where the same is situated, within three days after such real estate was attached, otherwise such attachment shall be a lien thereon only from the time when such certified copy shall be so deposited.

Duty of register of deeds on filing copy of attachment, &c.

SEC. 10. Each register of deeds shall note on every such certified copy, the day, hour and minute, when he receives it; and shall also enter in a book to be kept by him for that purpose, the names of the parties in such writ, designating who is plaintiff and who defendant, the time when the land was attached, and the time when such copy was deposited.

Fees of register and appraisers.

SEC. 11. The register of deeds shall be entitled to a fee of twenty-five cents for his services in each case, to be paid on the delivery of such copy; and the appraisers of the property attached pursuant to the provisions of this chapter, shall each be entitled to receive one dollar for each day, and fifty cents for each half day necessarily occupied by him in the appraisal, and six cents per mile for travelling one way, to be paid on the rendition of the services; which fees and compensation may be taxed for the plaintiff in his bill of costs.

Property to remain in hands of officer, unless bond be given.

SEC. 12. The property atached shall remain in the hands of the officer serving the attachment, unless the defendant, or any other person in whose possession such property may have been found, shall, before judgment in such suit, deliver to the officer a bond, executed to him by two or more sufficient sureties, being freeholders within this state, either with or without such defendant, or other person, to the satisfaction of such officer, as hereinafter provided.

Contents of bond.

SEC. 13. Such bond may be in a penalty double the amount specified in the affidavit annexed to the writ, as due to the plaintiff, conditioned for the payment of any judgment which may be recovered by the plaintiff in the suit commenced by such attachment, within sixty days after such judgment shall be rendered; or in a penalty double the appraised value of the property, and conditioned that such property shall be produced to satisfy any execution that may be issued on any judgment to be recovered by the plaintiff upon such attachment.

Release of property on delivery of bond.

SEC. 14. Upon the execution and delivery of such bond as provided in the preceding sections, the property attached shall be delivered by the officer to the defendant or person in whose possession the same shall have been found, but the suit shall not be discontinued or in any way affected by such delivery.

When and how bond may be sued.

SEC. 15. In case of a failure to perform the condition of any such bond, the plaintiff in such attachment may prosecute a suit thereon for his benefit, in the name of such officer, or his successor in office, or may take an assignment of such bond, and sue thereon in his own name; and shall be entitled to recover thereon the full value of the property attached, or so much thereof as shall be sufficient to satisfy the judgment rendered on such attachment, with interest and costs.

Proceedings on return of writ personally served.

SEC. 16. Upon the return of such writ, if it appear that a copy thereof has been personally served on the defendants, or either of them, or if either of the defendants shall appear in the suit, the same proceedings may be thereupon had in such suit, in all respects as upon the return of an original writ of summons personally served, in a suit commenced by such summons.

Proceedings on return of writ not personally served.

SEC. 17. If it appear by the return of such writ that any property has been attached thereon, and that neither of the defendants could be found, the plaintiff shall, within thirty days after such return, unless the defendants or some of them shall sooner appear in the suit, cause a notice to be published in some newspaper printed in the county for which said court is held, and if no newspaper is printed in said county, then in some newspaper printed in the judicial circuit in which such writ shall be returned, which notice shall state the names of the parties, the time when, from what court, and for what sum the writ was issued, and when the same was returnable, and shall be published for six successive weeks; and if any plaintiff shall neglect to cause such notice to be so published, as required in this section, the attachment shall be dismissed with costs.

Bond to be returned and filed by officer.

Sec. 18. If any bond shall have been given to the sheriff or other officer serving the writ, as hereinbefore provided, he shall state the fact in his return to the attachment, and return and file such bond therewith; and if any such bond shall be given after the return of the writ, and before judgment, such sheriff or other officer shall immediately cause the same to be filed in the clerk's office to which such writ was returned, and give notice thereof to the plaintiff or his attorney.

When plaintiff may file declaration, &c, on filing affidavit of publication of notice

Sec. 19. If a copy of the attachment shall not have been served upon any of the defendants, and none of them shall appear in the suit, the plaintiff, on filing an affidavit of the publication of the notice hereinbefore required for six successive weeks, may file his declaration in the suit, and proceed therein as if a copy of such attachment had been served upon the defendants.

When defendant not served, may appear and be admitted to defend.

Sec. 20. If any defendant not served with a copy of the attachment, shall appear at any time before judgment, he may be admitted by the court to defend the suit, upon such terms as such court may deem reasonable.

Judgment and execution in case of personal service, or appearance of defendant.

Sec. 21. When a copy of the attachment shall have been personally served on the defendant, or such defendant shall have appeared in the suit, judgment shall be rendered, and execution shall issue thereon, in the same manner, and with the like effect as in a suit commenced by summons, in which the summons shall have been returned personally served, except that by virtue of such execution, the officer to whom the same shall be directed and delivered, may sell any property attached in the suit, and remaining in the hands of the officer who served the attachment, wherever the same may be in this state.

Judgment and execution in case attachment is not personally served, and defendant does not appear.

Sec. 22. When a copy of the attachment shall not have been served, and the defendant shall not have appeared in the suit, judgment shall be rendered, and execution may issue in the same form as if such copy had been personally served, but such judgment shall not be conclusive against the defendant, and such execution shall only authorize the officer to whom it is directed, to sell the property attached in such suit.

Indorsement on execution in such case.

Sec. 23. In the case specified in the last section, the attorney issuing the execution, shall indorse thereon or annex thereto, a description of the property so attached, with a direction to the officer to sell the same, or so much thereof as may be sufficient to satisfy the execution, and not to levy the same or any part thereof upon any other property.

When not necessary to issue execution, to entitle plaintiff to sue bond.

Sec. 24. If a bond shall have been given to the officer, conditioned for the payment of the judgment, as provided in the thirteenth and fourteenth sections of this chapter, and judgment be rendered in favor of the plaintiff, it shall not be necessary to issue any execution upon such judgment, to entitle such plaintiff to sue on such bond.

Perishable property may be ordered to be sold.

SEC. 25. When any of the property taken in attachment shall consist of perishable property, the court, or any judge thereof, may make an order, directing such property to be sold, and the money arising from such sale to be brought into court, to abide the order of such court.

Officer to make sale, and deposite proceeds with clerk.

SEC. 26. Upon such order for a sale being made, the officer having such property, shall advertise and sell the same, in the same manner that personal property is required to be advertised and sold on execution, and shall deposite the proceeds thereof with the clerk to whose office the attachment is required to be returned.

To whom proceeds to be paid.

SEC. 27. If the plaintiff recover judgment, the court may order such money to be paid to the plaintiff thereon; but if judgment be rendered against the plaintiff, or the suit be discontinued, or the attachment dismissed, the court shall order such money to be paid to the defendant, or person entitled thereto.

When judgment rendered against plaintiff, court to impannel jury to assess damages.

SEC. 28. Whenever judgment shall be rendered against the plaintiff in attachment, the court shall, upon the request of the defendant impannel a jury, which shall proceed to assess the damages sustained by such defendant by reason of the taking, detention or sale of any property attached under the provisions of this chapter, and the court shall render judgment thereon against such plaintiff.

Practice in attachment suits.

SEC. 29. The practice in actions commenced by attachment, shall be the same in all respects, as in personal actions commenced by summons, as near as may be, except as otherwise provided by law.

Attachment against property of joint debtors.

SEC. 30. When two or more persons are jointly indebted as joint obligors, partners, or otherwise, the attachment may be issued against the separate or joint estates or property of such joint debtors, or any of them, and the same proceedings shall be had as hereinbefore prescribed.

Effect of sale in case of incumbrance removed before sale.

SEC. 31. If any estate which shall be attached shall be subject to a mortgage, or other incumbrance, and the mortgage shall be satisfied or the incumbrance removed before the sale on the execution, such estate may be sold on such execution in the same manner and with the same effect as if the mortgage or other incumbrance had never existed.

When officer to garnishee person having property of or indebted to defendant.

SEC. 32. If the plaintiff, or any one in his behalf, shall make an affidavit, stating that he verily believes that any person, (naming him) has property, credits or effects, (describing the same) in his possession belonging to the defendant, or is indebted to the defendant, and deliver the same to the officer having the writ, the officer, if he cannot attach such property and get possession thereof, shall serve such writ and affidavit upon such person, by giving him a copy thereof, with a written notice that he appear in court at the return of such writ.

Liability of garnishee on service of writ, &c.; to appear and answer.

SEC. 33. From the day of such service, the person so notified as garnishee shall stand liable to such plaintiff in attachment to the amount of the property, moneys and credits in his hands, and debts due or to become due from him to said defendant, and shall attend the court in accordance with such notice, and answer under oath all questions put to him touching the property, credits, and effects of the defendant in said garnishee's possession or within his knowledge, and as to all debts due or to become due from him to the defendant.

How garnishee may be compelled to appear and answer, &c.

SEC. 34. If such garnishee do not appear in court as hereinbefore required, the court may compel his appearance by attachment, and if appearing he shall neglect or refuse to answer all proper questions propounded to him, he may be punished by fine or imprisonment, or both, at the discretion of the court; and the court may also render a judgment against him for the amount of the plaintiff's demand, when the same shall be ascertained.

When garnishee to recover judgment against plaintiff for his fees.

SEC. 35. If upon the answer of the garnishee, no issue is made up between the plaintiff and garnishee as hereinafter provided, and it shall appear from such answer that the garnishee had no property or effects of the defendant, and was not indebted to him at the time he was notified, or that he delivered up to the officer at that time all of the property of the defendant in his possession, or paid to the officer the amount of his indebtedness to the defendant, then such garnishee shall recover judgment against the plaintiff for his fees for travel and attendance, which shall be the same as those allowed to witnesses.

When issue to be made up between plaintiff and garnishee, &c.

Ib., how tried, &c

When judgment may be rendered against garnishee.

SEC. 36. If the answer of the garnishee shall not be satisfactory to the plaintiff, an issue shall be immediately made up between the plaintiff and garnishee, which shall be for trial at the next term after the plaintiff shall have obtained judgment against the defendant, and in case no such judgment shall be obtained, the garnishee shall recover costs as above stated. All issues between the plaintiff and garnishee shall be tried, and judgment thereon rendered, and costs awarded and execution issued in the same manner and with the like effect as in other personal actions, except that the judgment against the garnishee, shall not be for a greater amount than that rendered against the defendant. In case the answer of the garnishee shall be satisfactory to the plaintiff, and it shall appear by it that he was indebted to the defendant, or had in his possession the property and effects of the defendant, the court, after judgment shall have been rendered against the defendant, shall render judgment against the garnishee according to the merits of the case.

When officer may require security to indemnify him.

SEC. 37. If in any case where an officer has a writ of attachment against property, there is any reasonable doubt as to the ownership of the property, or as to its liability so be taken on the attachment, the officer may require sufficient security to indemnify him for attaching such property.

CHAPTER 113.

OF PROCEEDINGS BY AND AGAINST CORPORATIONS IN COURTS OF LAW.

Foreign corporations may sue in this state on giving security for costs.

SECTION 1. A foreign corporation, created by the laws of any other state or country, may prosecute in the courts of this state, in the same manner as corporations created under the laws of this state, upon giving security for the payment of costs of suit, in the same manner that non-residents are required by law to do.

Exceptions.

SEC. 2. But when, by the laws of this state, any act is forbidden to be done by any corporation, or by any association of individuals, without express authority by law, and such act shall have been done by a foreign corporation, it shall not be authorized to maintain any action founded upon such act, or upon any liability or obligation, express or implied, arising out of, or made or entered into in consideration of such act.

Suits against corporations, how commenced.

SEC. 3. Suits against corporations may be commenced by writ of summons, or by declaration, in the same manner that personal actions may be commenced against individuals, and such writ, or a copy of such declaration, in any suit against a corporation, may be served on the presiding officer, the cashier, the secretary, or the treasurer thereof; or if there be no such officer, or none can be found, such service may be made on any other officer, agent or member of such corporation, or in such other manner, as the court in which the suit is brought may direct.

Proceedings on return of process duly served.

SEC. 4. When such process or a copy of such declaration with a notice of rule to plead, shall have been returned duly served, the plaintiff may proceed thereupon in such suit, in the same manner as in personal actions against natural persons.

Proof of domestic corporation.

SEC. 5. In suits brought by a corporation created by or under any statute of this state, it shall not be necessary to prove on the trial of the cause, the existence of such corporation, unless the defendant shall have pleaded in abatement, or given notice under his plea to the action, that the plaintiffs are not a corporation, and annex thereto an affidavit of the truth of such plea or notice.

Reciting acts of incorporation.

SEC. 6. In actions by or against any corporation created by or under any law of this state, it shall not be necessary to recite the act or acts of incorporation, or the proceedings by which such corporation was created, or to set forth the substance thereof, but the same may be pleaded by reciting the title of such act.

Mistake in naming corporation.

SEC. 7. In suits or proceedings by or against any corporation, a mistake in the naming of such corporation shall be pleaded in abatement; and if not so pleaded, shall be deemed to have been waived.

Residents may sue foreign corporations by attachment, &c.

SEC. 8. Suits brought by a resident of this state, against any corporation created by or under the laws of any other state, government, or country, for the recovery of any debt or damages, may be commenced by attachment; and the same proceedings shall be thereupon had, and with the like effect, as in case of an attachment against a natural person.

Double costs, &c.

SEC. 9. If it shall appear to the court, that any such suit against a foreign corporation was brought vexatiously and without just cause, they shall award double costs against the plaintiff, and such plaintiff shall be liable to the defendants for all damages which they may have sustained by such proceedings.

CHAPTER 114.

OF PROCEEDINGS AGAINST CORPORATIONS IN CHANCERY.

Injunctions against corporations in certain cases.

SECTION 1. Upon a bill being filed under the direction of the attorney general, in any circuit court, such court shall have power to restrain by injunction any corporation from assuming or exercising any franchise, liberty, or privilege, or transacting any business not authorized by the charter of such corporation; and in the same manner to restrain any individuals from exercising any corporate rights, privileges, or franchises, not granted to them by any law of this state.

Issuing and continuance of injunction.

SEC. 2. Such injunction may be issued before the coming in of the answer, upon satisfactory proof that the defendants complained of have usurped, exercised, or claimed any franchise, privilege, liberty, or corporate right, not granted to them, and after the coming in of the answer such injunction may be continued until judgment at law shall have been had.

Jurisdiction of court over officers, &c.

SEC. 3. The circuit court shall have jurisdiction over directors, managers, trustees, and other officers of corporations,

1. To compel them to account for their official conduct in the management and disposition of the funds and property committed to their charge:

2. To decree and compel payment by them to the corporation whom they represent, and to its creditors, of all sums of money, and of the value of all property which they may have acquired to themselves, or transferred to others, or may have lost or wasted, by any violation of their duties as such directors, managers, trustees, or other officers:

3. To suspend any such trustee, or other officer, from exercising his office, whenever it shall appear that he has abused his trust:

4. To remove any such trustee or officer from his office, upon proof or conviction of gross misconduct:

5. To direct, if necessary, new elections to be held by the body or board duly authorized for that purpose, to supply any vacancy created by such removal:

6. In case there be no such body or board, or all the members of such board be removed, then to report the same to the governor, who shall be authorized to fill such vacancies:

7. To set aside all alienations of property made by the trustees or other officers of any corporation, contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporation, in cases where the person receiving such alienation knew the purpose for which the same was made: and,

8. To restrain and prevent any such alienation in cases where it may be threatened, or there may be good reason to apprehend that it is intended to be made.

Construction of last section.

Sec. 4. When any visitatorial powers, over any corporation, are or shall be vested, by statute, in any corporate body or public officer, the provisions of the preceding section shall not be construed to divest or impair the powers so vested.

Proceedings to execute powers.

Sec. 5. The jurisdiction conferred by the third section of this chapter shall be exercised as in ordinary cases, on bill or petition, as the case may require, or as the court may direct, at the instance of the attorney general, prosecuting in behalf of this state, or at the instance of any creditor of such corporation, or at the instance of any director, trustee, or other officer of such corporation, having a general superintendence of its concerns.

Sequestrating corporate property.

Sec. 6. Whenever a judgment at law, or a decree in chancery, shall be obtained against any corporation, incorporated under the laws of this state, and an execution issued thereon shall have been returned unsatisfied in whole or in part, upon the petition of the person obtaining such judgment or decree, or his representatives, the circuit court within the proper county may sequestrate the stock, property, things in action, and effects of such corporation, and may appoint a receiver of the same.

Distribution upon decree.

Sec. 7. Upon a final decree on any such petition, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among the fair and honest creditors of such corporation, in proportion to their debts respectively, who shall be paid in the same order as provided in the case of a voluntary dissolution of a corporation.

Surrender of corporate rights.

Sec. 8. Whenever any incorporated company shall have remained insolvent for one whole year, or for one year shall have neglected or refused to pay and discharge its notes or other evidences of debt; or for one year shall have suspended the ordinary and lawful business of such corporation, it shall be deemed to have surrendered the rights, privileges and franchises granted by any act of incorporation, or acquired under the laws of this state, and shall be adjudged to be dissolved.

Proceedings against certain insolvent corporations.

Sec. 9. Whenever any corporation having banking powers, or having the power to make loans, on pledges or deposits, or authorized by law to make insurances, shall become insolvent, or unable to pay its debts, or shall neglect or refuse to pay its notes or evidences of debt, on demand, or shall have violated any of the provisions of its act or acts of incorporation, or of any other law binding on such corporation, any court having equity jurisdiction, may, by injunction, restrain such corporation and its officers from exercising any of its corporate rights, privileges, or franchises, and from collecting or receiving any debts or demands, and from paying out, or in any way transferring or delivering to any person, any of the moneys, property or effects of such corporation, until such court shall otherwise order.

Who may apply for injunction, &c.

Sec. 10. Such injunction may be issued on the application of the attorney general in behalf of this state, or on the application of any creditor or stockholder of such corporation, upon bill or petition, filed for that purpose, and upon due proof of any of the facts in the last section required, to authorize the issuing of the same. Whenever such injunction shall issue against any bank, for any violation of its charter, on the application of any creditor,

CHAPTER 114

the court shall proceed to final decree in such case, and adjudge a forfeiture if the proof is sufficient, notwithstanding such creditor may settle with such corporation, and relinquish his claim against said corporation, and in all such cases, the attorney general, under the direction of the governor, or any creditor, shall have the right to appear and prosecute such suit, and such suit shall not be discontinued if either of them so appear and prosecute such suit to final judgment.

Court may appoint receivers.

SEC. 11. Upon such application being made, in any stage of the proceedings thereupon, the court may appoint one or more receivers to take charge of the property and effects of such corporation, and to collect, sue for and recover the debts and demands that may be due, and the property that may belong to such corporation, who shall, in all respects, be subject to the control of the court.

Powers and obligations of receivers

SEC. 12. Such receivers shall possess all the powers and authority conferred, and be subject to all the obligations and duties imposed upon receivers appointed in case of the voluntary dissolution of a corporation.

When stockholders &c, may be made parties

SEC. 13. If such application be made by a creditor of any corporation, whose directors or stockholders are made liable by law for the payment of such debt, in any event or contingency, such directors or stockholders, or any of them, may be made parties to the bill or petition, either on the filing thereof, or in any subsequent stage of the proceedings, whenever it shall become necessary to enforce such liability.

Making directors &c., parties after decree.

SEC. 14. If any creditor of a corporation desire to make such directors or stockholders parties to the suit, after a decree therein against the corporation, he may do so, on filing a supplemental bill against them, founded upon such decree, and if such decree was rendered in a proceeding instituted by the attorney general, such creditor may, on his application, be made complainant therein, and may, in like manner, make the directors and stockholders sought to be charged, defendants in such suit.

Bill against stockholders, &c.

SEC. 15. Whenever any creditor of a corporation shall seek to charge the directors, trustees, or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his bill for that purpose in any circuit court, which shall possess jurisdiction to enforce such liability.

Proceedings thereon.

SEC. 16. The court shall proceed thereon as in other cases, and, when necessary, shall cause an account to be taken of the property, and debts due to and from such corporation, and shall appoint one or more receivers, who shall possess all the powers conferred, and be subject to all the obligations imposed on receivers in case of the voluntary dissolution of a corporation.

Proceedings if corporation be insolvent.

SEC. 17. But if on the coming in of the answer, or upon the taking of any such account, it shall appear that such corporation is insolvent, and that it has no property or effects to satisfy such creditor, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors, and stockholders, and enforce the same, by its decree as in other cases.

Distribution of property.

SEC. 18. Upon a final decree being made upon any such application to restrain a corporation, or upon any such bill filed against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among its fair and honest creditors, in the order and in the proportions prescribed in the case of a voluntary dissolution of a corporation.

When stockholders compelled to pay on stock held by them.

SEC. 19. In all cases in which the directors or other officers of a corporation, or the stockholders thereof, shall have been made parties to a suit in which a decree shall be rendered, if the property of such corporation shall be insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as shall be necessary to satisfy the debts of the company.

Enforcing payment by directors, &c.

SEC. 20. If the debts of the company shall remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and to decree the amount payable by each, and enforce such decree as in other cases.

Discovery by corporation.

SEC. 21. Upon any application to the court having jurisdiction in any of the cases provided in this chapter, such court may compel such corporation to discover any stock, property, things in action, or effects, alleged to belong or to have belonged to it, the transfer and disposition thereof, and the consideration, and all the circumstances of such disposition.

Discovery by officers, &c.

SEC. 22. Every officer, agent, or stockholder, of any corporation, against which proceedings shall be instituted, according to the provisions of this chapter, and every person to whom it shall be alleged that any transfer of property or effects of such corporation has been made, or in whose possession or control any such porperty or effects shall be alleged to be, may be compelled, in the discretion of the court, to answer a bill filed to obtain any discovery in the preceding section specified, notwithstanding such answer may expose the corporation of which he is a member, to a forfeiture of its corporate rights, or any of them.

Answers, how far evidence, and how compelled.

SEC. 23. The answers of the officers and agents of any corporation, shall be evidence against the corporation, in the same manner, and to the same extent as if such answers had been given upon an examination of such officers or agents, as witnesses in the cause, and such officers or agents may subsequently be examined as witnesses by either party, under the order of the court, but no such answer shall be compelled, unless by special order of the court.

Answer, &c., not to be used on indictment.

SEC. 24. Neither the answer of any such officer or agent, nor his testimony upon any such subsequent examination, shall be used as evidence upon any indictment, or other criminal prosecution or proceeding agaainst him.

Staying proceedings at law.

SEC. 25. Whenever any bill shall be filed, or any application shall be made against any corporation, its directors or other superintending officers, or its stockholders, according to the provisions of this chapter, the court may, by injunction, on the application of either party, and at any stage of the proceedings, restrain all prodeedings at law, by any creditor against the defendants in such suit; and whenever it shall appear necessary or proper, may order notice to be published in such manner as the court shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the suit, within a reasonable time, not less than six months from the first publication of such order, and in default thereof, to be precluded from all benefit of the decree, which shall be made in such suit, and from any distribution which shall be made under such decree.

Certain corporations excepted.

SEC. 26. The provisions of this chapter shall not extend to any incorporated library or lyceum society; to any religious corporation; or any incorporated academy or select school; nor to the proprietors of any burying ground incorporated under the laws of this state.

CHAPTER 115.

OF PROCEEDINGS AS FOR CONTEMPTS, TO ENFORCE CIVIL REMEDIES, AND TO PROTECT THE RIGHTS OF PARTIES IN CIVIL ACTIONS.

Cases in which courts of record may punish for misconduct.

SECTION 1. Every court of record shall have power to punish by fine and imprisonment, or either, any neglect or violation of duty, or any misconduct, by which the rights or remedies of a party in a cause or matter depending in such court, or triable therein, may be defeated, impaired, impeded, or prejudiced in the following cases:

1. All attorneys, counsellors, solicitors, clerks, registers, sheriffs, coroners, and all other persons in any manner duly elected or appointed to perform any judicial or ministerial services, for any misbehavior in such office or trust, or for any wilful neglect or violation of duty therein; for disobedience of any process of such court, or of any lawful order thereof, or of any lawful order of a judge of such court, or of any officer authorized to perform the duties of such judge:

2. Parties to suits, for putting in fictitious bail or sureties, or for any deceit, or abuse of the process or proceedings of the court:

3. Parties to suits, attorneys, counsellors, solicitors, and all other persons, for the non-payment of any sum of money ordered by such court to be paid, in cases where by law execution cannot be awarded for the collection of such sum; and for any other disobedience to any lawful order, decree or process of such court:

4. All persons for assuming to be officers, attorneys, counsellors, or solicitors of any court, and acting as such without authority; for rescuing any property or person which shall be in the custody of any officer by virtue of process issued from such court; for unlawfully detaining any witness or party to a suit, while going to, remaining at, or returning from the court where such suit shall be noticed for trial; and for any other unlawful interference with the process or proceedings in any action:

5. All persons summoned as witnesses, for refusing or neglecting to obey such summons, or to attend, or to be sworn or answer as such witnesses:

6. Persons summoned as jurors in any court, for improperly conversing with any party to a suit to be tried at such court, or with any other person in relation to the merits of such suit; for receiving communications from any such party, or from any other person, in relation to the merits of such suit, without immediately disclosing the same to the court:

7. All inferior magistrates, officers and tribunals, for disobedience of any lawful order or process of a superior court, or for proceeding in any cause or matter contrary to law, after such cause or matter shall have been removed from their jurisdiction: and,

8. All other cases where attachments and proceedings as for contempts have been usually adopted and practiced in courts of record, to enforce the civil remedies of any party, or to protect the rights of any such party.

When may be punished summarily.

SEC. 2. When any misconduct punishable by fine and imprisonment, as declared in the last section, shall be committed in the immediate view and presence of the court, it may be punished summarily, by fine or imprisonment, or both, as hereinafter prescribed.

When notice, &c., to be given.

SEC. 3. When such misconduct is not so committed, the court shall be satisfied by due proof by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defence, except in cases of disobedience to any rule or order requiring the payment of money.

When attachment peremptory.

SEC. 4. When any rule or order of the court shall have been made for the payment of costs, or any other sum of money, and proof by affidavit shall be made, of the personal demand of such sum of money, and of a refusal to pay it, the court may issue a precept to commit the person so disobeying to prison, until such sum, and the costs and expenses of the proceeding shall be paid.

When order or attachment to answer.

SEC. 5. In all cases, other than that specified in the last section, the court shall either grant an order on the accused party to show cause, at some reasonable time to be therein specified, why he should not be punished for the alleged misconduct, or shall issue an attachment to arrest such party, and to bring him before such court to answer for such misconduct.

Attachment to answer, without special order.

SEC. 6. When a rule shall have been entered in any court according to the practice thereof, requiring any officer or other person to whom any process of such court may have been directed and delivered, to return the same, an attachment for disobedience of such rule may issue according to the practice of the court, to arrest such officer or person, to answer for such disobedience, without special application to the court.

When court may award habeas corpus.

SEC. 7. If the party charged with misconduct be in the custody of any officer by virtue of an execution against his body, or by virtue of any process for any other contempt or misconduct, the court may award a writ of habeas corpus to bring up the body of such person, to answer for such misconduct.

When habeas corpus may be allowed by judge, &c.

SEC. 8. In cases where a party is entitled to an attachment against any person without the special order of the court, and such person shall be in custody as specified in the last section, a writ of habeas corpus to bring up such person, may be allowed by any judge of the court, or by any officer authorized to perform the duties of such judge in vacation.

Powers of sheriff

Sec. 9. Such writ shall anthorize the sheriff in whose custody such person shall be, to remove and bring him before the court to which the same shall be returnable, and to detain him at the place where such court shall be sitting until some order be made by the court for his disposition.

When penalty of bond to be directed

Sec. 10. When an attachment shall be issued according to the provisions of this chapter, by the special order of any court, such court shall direct the penalty in which the defendant shall give bond for his appearance to answer.

When penalty to be directed by single judge, &c.

Sec. 11. In all other cases when a party shall be entitled to an attachment, without the special order of the court, he shall make application to a judge of the court, or to some officer authorized to perform the duties of such judge, who, upon due proof of the facts and circumstances, shall direct the penalty in which the defendent shall give bond for his appearance to answer the matters alleged against him, and shall indorse such order on the attachment.

Keeping persons arrested.

Sec. 12. Upon arresting any defendant upon an attachment to answer for any alleged misconduct, the sheriff shall keep such person in his actual custody, and shall bring him personally before the court issuing the attachment, and shall keep and detain him in his custody until such court shall have made some order in the premises, unless such defendant shall entitle himself to be discharged, as prescribed in the next section.

To be discharged on giving bond.

Sec. 13. In cases where a sum shall have been indorsed on any attachment issued by the special order of the court, and where any sum shall have been so indorsed by any judge or other officer as herein before prescribed, the defendant shall be discharged from arrest on such attachment upon executing and delivering to the officer making the same, in his name of office, and to his assigns, at any time before the return day of such writ, a bond with two sufficient sureties, in the penalty indorsed on such attachment, with a condition that the defendant will appear on the return of such attachment, and abide the order and judgment of the court thereupon.

When to be discharged on order of court only.

Sec. 14. When an attachment shall be issued by the special order of the court, a certificate to that effect shall be indorsed thereon by the clerk of such court, and if no sum be specified in which the defendant shall be held to bail on such writ, he shall not be entitled to be discharged from the arrest thereon, upon executing any bond, or in any other manner, unless upon the special order of the court issuing the attachment.

When penalty to be one hundred dollars.

Sec. 15. When an attachment shall be issued without the special order of the court, and an order specifying the sum in which the defendant is to be held to bail, is not indorsed thereon, the defendant shall be discharged from the arrest thereon, on executing a bond in the penalty of one hundred dollars, with sureties in the same manner and with the like condition as hereinbefore specified.

Bonds to be returned.

Sec. 16. Upon returning any attachment, the officer executing the same, shall return the bond, if any, taken by him of the defendant, which shall be filed with such attachment.

SEC. 17. The sheriff or other officer to whom any attachment shall be delivered, shall return the same by the return day specified therein, without any previous rule or order for that purpose, and in case of default an attachment may be issued against him of course, upon being allowed by a judge of the court, or by an officer authorized to perform the duties of such judge, upon proof of such default; and in such allowance the cause of issuing the same shall be stated, and that the defendant is not to be discharged upon bail, or in any other manner but by the order of the court.

Neglect to return attachment.

SEC. 18. The officer to whom such last mentioned attachment shall be delivered, shall execute the same by arresting and keeping the defendant in his custody, bringing him personally before the court, and detaining him in such custody until the order of the court.

Defendant how kept.

SEC. 19. When any defendant arrested upon an attachment shall have been brought into court, or shall have appeared therein, the court shall cause interrogatories to be filed, specifying the facts and circumstances alleged against the defendant, and requiring his answer thereto; to which the defendant shall make written answers, on oath, within such reasonable time as the court shall allow, and the court may receive any affidavits or other proofs contradictory of the answers of the defendant, or in confirmation thereof; and upon the original affidavits, such answers and such subsequent proof, shall determine whether the defendant has been guilty of the misconduct alleged.

Interrogatories, evidence, &c.

SEC. 20. If the court shall adjudge the defendant to have been guilty of the misconduct alleged, and that the misconduct was calculated to, or actually did defeat, impair, impede or prejudice the rights or remedies of any party in a cause or matter depending in such court, it shall proceed to impose a fine, or to imprison him, or both, as the nature of the case shall require.

When accused to be punished.

SEC. 21. If an actual loss or injury has been produced to any party by the misconduct alleged, the court shall order a sufficient sum to be paid by the defendant to such party, to indemnify him and to satisfy his costs and expenses, instead of imposing a fine upon such defendant, and in such case the payment and acceptance of such sum shall be an absolute bar to any action by such aggrieved party to recover damages for such injury or loss.

When sum to be paid to indemnify party injured.

SEC. 22. In all cases other than that specified in the preceding section, the fine shall not exceed two hundred and fifty dollars over and above the costs and expenses of the proceedings.

Fine in other cases.

SEC. 23. When the misconduct complained of consists in the omission to perform some act or duty which is yet in the power of the defendant to perform, he shall be imprisoned only until he shall have performed such act or duty, and paid such fine as shall be imposed, and the costs and expenses of the proceedings.

Time of imprisonment.

SEC. 24. In such case the order and process of commitment shall specify the act or duty to be performed, and the amount of the fine and expenses to be paid.

Order what to specify.

SEC. 25. In all other cases where no special provision is otherwise made by law, if imprisonment be ordered, it shall be for some reasonable time not exceeding six months, and until the expenses

When to be imprisoned six months, &c.

of the proceedings are paid; and also if a fine be imposed, until such fine be paid; and in the order and process of commitment, the duration of such imprisonment shall be expressed.

Liable to indictment.

SEC. 26. Persons proceeded against according to the provisions of this chapter shall also be liable to indictment for the same misconduct, if it be an indictable offence; but the court before which a conviction shall be had on such indictment shall take into consideration the punishment before inflicted, in forming its sentence.

Default of defendant.

SEC. 27. If the defendant against whom an attachment shall have been issued and returned served, do not appear on the return day thereof, the court may either award another attachment, or may order the bond taken on the arrest, to be prosecuted, or both.

Suit, on bond.

SEC. 28. Such order shall operate as an assignment of the bond to any aggrieved party who shall be authorized by the court to prosecute the same, and such party may maintain an action thereon in his own name, as assignee of the sheriff or officer to whom the same was given, in the same manner as in other actions on bonds, with condition to perform covenants other than the payment of money.

Damages therein

SEC. 29. The measure of the damages to be assessed in such action shall be the extent of the loss or injury sustained by such aggrieved party, by reason of the misconduct for which the attachment was issued, and his costs and expenses in prosecuting such attachment.

When bond to be sued by attorney general, or district attorney.

SEC. 30. If there be no party aggrieved by the misconduct for which the attachment was issued, the court, in case the defendant shall fail to appear, according to the condition of the bond taken on the arrest, shall order the same to be prosecuted by the attorney general, or by the district attorney for the county in which the bond was taken, in the name of the officer who took such bond.

Recovery; application thereof.

SEC. 31. In such case the whole penalty of the bond shall be forfeited and recovered, and from the money collected thereon the court shall order such sum to be paid to the party prosecuting the attachment as the court ordering the prosecution shall think proper, to satisfy the costs and expenses incurred by him, and to compensate him for any injury he may have sustained by the misconduct for which such attachment was issued; and the residue of such moneys shall be paid into the state treasury, to the credit of the school fund.

Taking insufficient sureties.

SEC. 32. If, on the return of an execution duly issued upon any judgment obtained upon such bond, it shall appear that the sureties taken therein were, at the time of taking them, insufficient, and that the officer taking them had reasonable ground to doubt their sufficiency, he shall be liable in an action on the case to the party aggrieved, who may have prosecuted such suit for the amount of the judgment recovered by him, and for his costs and expenses in such suit; or if such suit was brought by the attorney general or a district attorney, an action on the case may in like manner be brought by them in the name of this state, for the amount of the judgment so recovered; and the same disposition of the moneys collected in such action on the case against such officer, shall be made, as directed in the preceding section.

Sickness of defendant, &c.

SEC. 33. Whenever, by the provisions of this chapter, an officer is required to keep any person arrested upon attachment in actual custody, and to bring him personally before any court, the inability from sickness or otherwise of such person to attend such court personally shall be a sufficient excuse for not bringing him before such court; nor shall any officer be required, in any case, to confine any person arrested upon an attachment, to answer for misconduct, in any prison, or otherwise to restrain him of his personal liberty, except so far as shall be necessary to secure his personal attendance.

Persons arrested, how kept.

CHAPTER 116.

OF PROCEEDINGS FOR THE COLLECTION OF DEMANDS AGAINST BOATS AND VESSELS.

Boats and vessels, for what debts liable.

SECTION 1. Every boat or vessel used in navigating the waters of this state shall be liable,

1. For all debts contracted by the master, owner, agent, or consignee thereof, on account of supplies furnished for the use of such boat or vessel, on account of work done or services rendered on board of such boat or vessel, or on account of labor done, or materials furnished by mechanics, tradesmen, or others, in and for building, repairing, fitting out, furnishing or equipping such boat or vessel:

2. For all sums due for wharfage or anchorage of such boat or vessel within this state:

3. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or any contract touching the transportation of persons or property, entered into by the master, owner, agent or consignee of the boat or vessel on which such contract is to be performed: and,

4. For all injuries done to persons or property by such boat or vessel.

Debt, &c. may be collected of boat, &c.

SEC. 2. Any person having a demand as aforesaid, instead of proceeding for the recovery thereof against the master, owner, agent or consignee of a boat or vessel, may, at his option, institute suit against such boat or vessel by name.

Suit, how instituted against boat.

SEC. 3. Any plaintiff wishing to institute suit against a boat or vessel, shall file his complaint against such boat or vessel by name, with the clerk of the circuit court of the county in which such boat or vessel shall lie or be.

Ib.

SEC. 4. The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued. It shall be verified by the affidavit of the plaintiff, or some credible person or persons for him, and shall stand in lieu of a declaration.

Warrant to be issued.

SEC. 5. Whenever any complaint as aforesaid shall be filed in the office of the clerk of the circuit court, it shall be his duty to issue a warrant returnable as a summons, directing and authorizing the sheriff to seize the boat or vessel mentioned in the complaint, and detain the same in his custody, together with its tackle, apparel and furniture, until discharged from such custody by due course of law.

Proceedings how conducted.

SEC. 6. Upon the return of any warrant issued by virtue of the next preceding section, proceedings shall be had in the circuit court against the boat or vessel seized, in the same manner as if suit had been instituted against the person on whose account the demand accrued.

Who may defend, &c.

SEC. 7. The master, owner, agent or consignee of the boat or vessel may appear on behalf of such boat or vessel, and plead to the action.

Pleading, &c.

SEC. 8. The circuit court may by rule prescribe the time and manner of pleading, of exhibiting or filing papers, or taking any needful steps in any suit to be commenced under this chapter, when the time and manner is not prescribed by this law.

How boat, &c., discharged from detention.

SEC. 9. If the master, owner, agent or consignee shall, before final judgment in any suit instituted by virtue of this chapter, give bond to the plaintiff in such suit with sufficient sureties, to be approved of by the court, or the judge or clerk thereof in vacation, conditioned to satisfy the amount which shall be adjudged to be owing and due to the plaintiff in the determination of the suit, together with all costs accruing, such boat or vessel, with the tackle, apparel and furniture belonging thereto, shall be discharged from further detention by the sheriff.

Boat may be sold.

SEC. 10. If judgment shall be rendered against any boat or vessel in favor of the plaintiff, the court shall make an order directed to the sheriff, commanding him to sell such boat or vessel, together with its tackle, apparel and furniture, to satisfy the judgment, and all costs that may have accrued in the cause, which order shall be executed and returned in the same manner as executions.

Execution for plaintiff, how issued.

SEC. 11. If bond and security shall have been entered into according to the ninth section of this chapter, and judgment shall have been rendered in favor of the plaintiff, execution shall be issued for the amount of judgment and costs, in favor of the plaintiff, against the principal and security in such bond.

Justices to have cognizance, &c.

SEC. 12. Justices of the peace within their respective counties shall have cognizance of all cases arising under this chapter, when the demand claimed shall not exceed the jurisdiction of a justice of the peace.

Proceedings before justice.

SEC. 13. In all their proceedings, justices of the peace shall conform to the provisions of the law governing justices' courts, and as near as may be to the provisions of this chapter, as they apply in the circuit court.

Warrant issued by justice, how returned, &c.

SEC. 14. Each warrant issued by a justice of the peace under this chapter, shall be returnable forthwith, and upon the return of such warrant it shall be the duty of the justice of the peace to hear and determine the complaint of the plaintiff in a summary manner.

Ib.

SEC. 15. All warrants issued by this chapter shall be served and returned as writs of attachment are served and returned.

Part of boat, &c. may be sold.

SEC. 16. Whenever an order of sale shall be made for the sale of a boat or vessel, with its tackle, apparel and furniture, the sheriff or constable shall have power to sell such part thereof, or such interest therein, as shall be necessary to satisfy the amount of the judgment rendered in favor of the plaintiff, and all the costs that may have accrued.

Continuance how granted.

SEC. 17. Upon good and sufficient cause shown by the master, owner, agent or consignee of any boat or vessel, sued under this chapter, the court or justice of the peace may grant a continuance of the cause, but no such continuance shall operate as a discharge of such boat or vessel from the custody of the sheriff or constable.

When refused.

SEC. 18. No continuance of a cause under this chapter shall be granted to the plaintiff.

Fees of officers.

SEC. 19. Sheriffs, constables and other officers shall receive the same fees and compensation for their services under this chapter as are allowed them in cases of suits of attachment.

Appeal allowed.

SEC. 20. In all cases arising under this chapter, if judgment shall have been rendered in favor of a plaintiff, the master, owner, agent or consignee of the boat or vessel, or other person interested, may appeal from the judgment, or sue out a writ of error, as if they or either of them had been sued.

Time allowed for bringing action.

SEC. 21. All actions against a boat or vessel, under the provisions of this chapter, shall be commenced and sued within one year after the cause of such action shall have accrued.

When county courts may have jurisdiction under this chapter.

SEC. 22. County courts shall have cognizance of all cases arising under this chapter, when the demand claimed shall not exceed the jurisdiction of such courts and shall be governed by the provisions of this chapter relative to circuit courts.

CHAPTER 117.

OF FORCIBLE ENTRIES AND UNLAWFUL DETAINERS.

Forcible entry forbidden.

SECTION 1. No person or persons shall hereafter make any entry into lands, tenements or other possessions, but in cases where entry is given by law, and in such cases not with strong hand, nor with multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine.

Justice of the peace may inquire as to same, and cause restitution to be made.

SEC. 2. Any justice of the peace shall have authority to inquire as hereinafter directed, as well against those who make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same as against those who, having lawful and peaceful entry into lands, tenements or other possessions, unlawfully detain the same; and if it be found upon such inquiry that an unlawful or forcible entry hath been made, and that the said lands, tenements or other possessions are unlawfully held, or are detained by force and strong hand, or that the same, after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

Proceedings on complaint.

SEC. 3. When any complaint shall be made in writing, to any justice of the peace, of any such unlawful or forcible entry or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the same county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before the said justice on a day in such summons named, which shall not be less than six nor more than ten days from the day of issuing such summons, and at the place therein mentioned.

Summons, how served and returned.

SEC. 4. Such summons shall be served upon the person or persons against whom the same is issued, by delivering a certified copy thereof to such person or persons, at least three days before the return day thereof; and the officer serving the same shall make a special return of the time and manner of serving said summons.

Proceedings on return of summons.

SEC. 5. After the return of said summons served as is herein before provided, and at the time and place appointed in said summons, the said justice shall proceed to hear and determine said complaint, provided that if either party shall call for a trial by jury, the said justice shall issue a venire, in the same manner, and upon the same terms, as is in other cases provided for trial by jury in justices' court, and such jury shall be sworn as in other cases.

Summons, how issued and served when defendant is absent from county.

SEC. 6. If at the time of making said complaint it shall be made to appear that the person or persons against whom said complaint is made, or either of them, are absent from the county, it shall be the duty of the justice before whom the same is made, to issue his summons as herein before provided, and make the same returnable not less than six nor more than ten days from the time of issuing the same, and such summons may be served by leaving a true and attested copy thereof at the last and usual place of such person or persons' abode not less than six days before the return day thereof; such copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer leaving the same, and the said officer shall make a special return of the time and manner of serving said summons, and the suit shall thereafter proceed the same as though a personal service were had of such summons.

Adjournment.

SEC. 7. The justice may, at his discretion, adjourn any trial under this chapter not exceeding six days; but in all cases mentioned in section twelve of this chapter, if the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial for the want of some material witness, naming him, that he has made due exertion to obtain said witness, and believes if an adjournment be allowed he will be able to procure the attendance of said witness, or his deposition, in season to produce the same upon such trial; in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent which may accrue during the pendency of such suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding three months.

Depositions, how taken.

SEC. 8. The deposition of any witness whose testimony may be considered necessary by either party, may be taken for the same reasons, in the same manner, and with the same effect as is provided by law for the taking of depositions to used in justices' courts.

Judgment upon finding of justice or jury.

SEC. 9. If upon the trial of any complaint under this chapter, the justice or jury shall find that the defendant or defendants, or either of them, are guilty of the allegations in the complaint, the said justice shall thereupon enter judgment for the complainant, to have restitution of the premises, and shall impose such fine, not exceeding one hundred dollars, considering all the circumstances as he may deem just, and shall tax the costs for the complainant, and may issue execution in favor of said complainant, for such costs as in other actions ex delicto, and the said justice shall also award and issue a writ of restitution; but if the said justice or the jury find that the person complained of is not guilty, the complaint, in their opinion not having been supported, the said justice shall tax the costs against the complainant, and issue execution therefor.

If jury cannot agree new one to be summoned.

SEC. 10. If the jury empannelled as aforesaid cannot agree upon a verdict, the justice before whom the trial is pending, may discharge said jury, if in his opinion they are not likely to agree upon a verdict, and issue a venire returnable forthwith, or at some other time agreed upon by the parties, for the purpose of empannelling a new jury.

When and how complainant may recover treble damages, &c.

SEC. 11. The complainant of any forcible or unlawful entry or of any unlawful detainer as aforesaid, who shall recover against the person complained of as aforesaid, shall be entitled to recover treble damages, with costs of suit, by an action of trespass against the offender or offenders, to be brought before any justice of the peace or a court of record for that purpose: Provided, always, that nothing contained in the foregoing part of this chapter shall be construed to extend to any person or persons who have had the quiet, peaceable and uninterrupted occupation of any lands, tenements or other possessions, otherwise than by demise or lease, for the period of three whole years next before the entering of such complaint, any thing in this chapter to the contrary notwithstanding.

Limitation of the provisions of this chapter.

Proceedings against lessee holding over, not paying rent, &c.

SEC. 12. When any person shall hold over any lands, tenements or other possessions after the termination of the time for which they are demised or let to him or her, or to the person under whom he or she holds possession, or contrary to the conditions or covenants of the lease or agreement under which he or she holds; or after any rent shall have become due according to the terms of such lease or agreement, and shall remain unpaid for the space of three days; in all such cases, if the lessor, his heirs, executors, administrators, assigns, agent or attorney, shall make demand in writing of such tenant, that he or she shall deliver possession of the premises held as aforesaid; and if such tenant shall refuse or neglect for the space of three days after such demand to quit the possession of such lands or tenements, or to pay the rent therefor, so due and unpaid as aforesaid, upon complaint thereof to any justice of the peace of the proper county, the justice shall proceed to hear, try and determine the same, in the same manner as in other cases herein before provided for: Provided, that in all cases mentioned in this section, the justice shall impose no fine upon such tenant.

Limitation of last section.

SEC. 13. The preceding section shall not extend to any person who has or shall have continued in possession three years after the termination of the time for which the premises were demised, or let to him or her, or those under whom he or she claims, or to any person who continues in possession three years quietly and peaceably by disseizin, anything contained in this chapter to the contrary notwithstanding.

Treble damages, when recoverable.

SEC. 14. The complainant shall be entitled to an action of trespass against the person complained of, and who shall be found guilty on the trial; and may recover treble damages from the time of notice given to quit the premises, and until that time damages only.

Penalty on jurors and witnesses for not appearing, &c.

SEC. 15. Every person summoned as a juror, or subpœnaed as a witness, who shall not appear, or who appearing shall refuse to serve or give evidence in any prosecution instituted by virtue of this chapter, shall forfeit and pay for every such default or refusal, unless some reasonable cause be assigned, such fine, not exceeding ten dollars, as the said justice shall think proper to impose.

Fines, where paid; defendant may be committed, &c.

SEC. 16. All fines imposed by virtue of any provisions in this chapter, shall be paid to the county treasurer of the county where the action is commenced, for the use of common schools, and the said justice may commit the person against whom the fine is imposed, to the common jail of the county, until such fine be paid, or the said justice may issue execution therefor as in other cases ex delicto.

Appeals, when and how taken.

SEC. 17. It either party shall feel aggrieved by the verdict of the jury or decision of the justice, he may appeal within ten days as in other cases tried before justices of the peace, excepting his bond shall be with two or more sufficient sureties, to be approved by said justice, conditioned to pay all costs of such appeal and abide the order the court may make therein, and pay all rent and other damages justly accruing to said complainant during the pendency of such appeal

Effect of appeal, &c.

SEC. 18. Upon the taking of such appeal, all further proceedings in the case shall be thereby stayed and the appellate court shall thereafter issue all needful writs and processes to carry out the provisions of this chapter, according to the true intent and meaning thereof.

Proceedings if writ of restitution has been issued, &c.

SEC. 19. If a writ of restitution shall have been issued previous to the taking of any appeal, as provided in this chapter, the justice shall forthwith give the appellant a certificate of the allowance of such appeal, and upon the service of such certificate upon the officer having such writ of restitution, the said officer shall forthwith cease all further proceedings by virtue of such writ, and if such writ shall not have been completely executed, the defendant shall remain in possession of the premises until the appeal shall be determined.

When proceedings not to be dismissed for want of form.

SEC. 20. In all cases of appeal under the provisions of this chapter, the appellate court shall not dismiss or quash the proceedings for want of form only, provided the proceedings have been conducted substantially according to the provisions of this chapter.

Amendments.

Sec. 21. Amendments to the complaint, summons or plea, in matters of form only, may be allowed by the court at any time before final judgment, upon such terms as to the court shall appear just to the parties.

Matters in justification, &c. to be pleaded or notice thereof given.

Sec. 22. All matters in excuse, justification or avoidance of the allegations in the complaint, shall be pleaded specially, or notice thereof given with the plea of the general issue.

Court may compel return or amendment thereof.

Sec. 23. The appellate court shall have power to compel the justice, by attachment, to make or amend any return which shall be withheld, or insufficiently or improperly made.

Forms of process and verdict.

Sec. 24. The following, or equivalent forms, shall be used in proceedings under this chapter, to wit:

Summons.

State of Wisconsin, } ss.
County of ———— }

To the sheriff or any constable of the county aforesaid:

Whereas ———— of ———— hath exhibited unto ————, a justice of the peace in and for said county aforesaid, a complaint against ———— of ————, for that the said ———— on the day of ———— at ———— (here insert the substance of the complaint with legal certainty:) Therefore in the name of the State of Wisconsin, you are hereby commanded to summon the said ———— if to be found in the said county, to appear before me at ———— on ———— day of ———— at ———— of the clock in the ————noon, then and there to make answer to and defend against the complaint aforesaid, and further to be dealt with according to law, and make due return to me of this summons, with your doings thereon.

Dated at ———— this ———— day of ———— in the year one thousand eight hundred and ————.

Justice.

Writ of Restitution.

State of Wisconsin, } *ss.*
County of ———— }

To the sheriff or any constable of the county aforesaid:

Whereas ———— of ———— at a court of inquiry of an unlawful or forcible entry and unlawful detainer, held at ———— in the county aforesaid, on the ———— day of ————, one thousand eight hundred and ————, before ————, a justice of the peace in and for the county aforesaid, by the consideration of the court, recovered judgment against ———— of ————, to have restitution of, (here describe the premises as in the complaint:) Therefore, in the name of the State of Wisconsin, you are hereby commanded, that taking with you the force of the county, if necessary, you cause the said ———— to be immediately removed from the aforesaid premises, and the said ———— to have peaceable restitution of the same; you are also hereby commanded that of the goods and chattels of the said ———— within said county, you cause to be levied, and the same being disposed of according to law, to be paid to the said ———— the sum of ————, being the costs taxed against the said ———— for the said ———— at the court aforesaid, together with twenty-five cents for this writ, and thereof together with this writ, make due return within thirty days from the date hereof, according to law.

Dated at ———— the ———— day of ———— one thousand eight hundred and ————.

Justice.

Verdict.

At a court of inquiry held at ———— on the ———— day of ———— one thousand eight hundred and ————, before ————, a justice of the peace in and for the county of ———— complainant, against ———— respondent; the jury find that the facts alleged in the said complaint are true, that the said ———— is guilty thereof, and the said ———— ought to have restitution of the premises therein described, without delay, (or in case the jury do not find the allegations of complaint proved, then) the jury find that the facts alleged in the same complaint are not proved, and that the said ———— is not guilty thereof.

Foreman.
Justice.

CHAPTER 118.

OF ACTIONS BY PERSONS HOLDING CLAIMS ON UNITED STATES LANDS.

Persons settled on U. S lands may maintain actions for injuries to the possession.

SECTION 1. Any person settled upon any of the public land belonging to the United States, may maintain trespass quare clausum fregit, trespass, ejectment, forcible entry and detainer, unlawful detainer and forcible detainer, for injuries done to the possession thereof.

Possession deemed to extend to the boundaries of "claim."

SEC. 2. On the trial of any such cause, the possession, or possessory right of the plaintiff, shall be considered as extending to the boundaries embraced by the "claim" of such plaintiff, so as to enable him to have and maintain either of the aforesaid actions, without being compelled to prove an actual enclosure: Provided, that such "claim" shall not exceed, in any case, one hundred and sixty acres, and the same may be located in two different parcels, to suit the convenience of the holder.

Extent of "claim," &c.

"Claim" to be marked out; to be occupied or improved.

SEC. 3. Every such "claim," to entitle the holder to maintain either of the aforesaid actions, shall be marked out, so that the boundaries thereof may be readily traced, and the extent of such "claim" easily known; and no person shall be entitled to maintain either of said actions for possession of, or injury done to any "claim," unless he occupy the same, or shall have made improvements thereon to the value of fifty dollars.

What shall be deemed abandonment of "claim."

SEC. 4. A neglect to occupy or cultivate such "claim" for the period of six months, shall be considered such an abandonment as to preclude the claimant from maintaining either of the aforesaid actions.

CHAPTER 119.

OF THE ACTION OF REPLEVIN.

When action of replevin may be brought.

SECTION 1. Whenever any goods or chattels shall have been wrongfully taken, or shall be wrongfully detained, an action of replevin may be brought for the recovery thereof, and for the recovery of the damages sustained by reason of such unjust caption or detention, except in the cases hereinafter specified.

Who may maintain an action of replevin.

SEC. 2. Whenever any person might maintain an action for any personal property wrongfully taken, such person may maintain an action of replevin for such property.

How to be laid and tried.

SEC. 3. Whenever an action of replevin shall be brought for the recovery of goods or chattels, it shall be laid and tried in like manner as actions of trespass for injuries to personal property.

Not to lie for property taken for tax.

SEC. 4. No replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, in pursuance of any statute of this state.

When not to lie for goods taken in execution or on attachment.

SEC. 5. No replevin shall lie at the suit of the defendant in any execution or attachment to recover goods or chattels seized by virtue thereof, unless such goods and chattels are exempted by law from such execution or attachment. Nor shall replevin lie for such goods or chattels at the suit of any other person, unless he shall, at the time, have a right to reduce into his possession the goods taken.

Writ not to issue until affidavit made; contents of same.

SEC. 6. No writ of replevin shall be issued until an affidavit shall be filed with the clerk, made by the proposed plaintiff, or some one in his behalf, stating that such plaintiff is then lawfully entitled to the possession of certain personal property, giving a particular description thereof, and of the value thereof, and that the same has been unjustly taken and is unjustly detained, (or that the same is unjustly detained, as the case may be,) by the proposed defendant, naming him, and that the same has not been taken for any tax levied by virtue of any law of this state, nor seized under any execution or attachment against the goods and chattels of such plaintiff liable to execution.

Replevin to be commenced by writ, &c.

SEC. 7. Actions of replevin shall hereafter, in all cases, be commenced by writ, which shall be issued out of the court in which it shall be made returnable, and shall be substantially in the following form:

The State of Wisconsin to the Sheriff, &c.

Form of same.

Whereas A. B. complains that C. D. has taken, and does unjustly detain, (or does unjustly detain, as the case may be,) (here give a particular description of the goods and chattels to be replevied, and of the value thereof,) therefore you are commanded, that if the said A. B. shall give you security, as required by law, to prosecute his said complaint, and to return the aforesaid goods and chattels, if return thereof shall be adjudged, and to pay all such sums of money as may be recovered against him hereupon, that you cause the same goods and chattels to be replevied and delivered to the said A. B. without delay; and also that you summon the said C. D. to appear before the judge of the court, at, &c., on the, &c., (some day on which writs in personal actions may be made returnable,) to answer the said A. B. in the premises. Witness, &c.

Plaintiff to execute bond and condition of same.

SEC. 8. After the sheriff has taken the property, the plaintiff in the action, or some one in his behalf, shall execute a bond to the sheriff, or other officer to whom the writ is directed, with the addition of his name of office, with sufficient sureties, who shall swear that they are each worth the amount of the penalty of the bond, over and above all debts, or who shall be accepted by the defendant, in a penalty at least double the value of the property specified in the writ; which value shall be ascertained by the oath of one or more disinterested witnesses, to be sworn and examined by the sheriff. Such bond shall be conditioned that the plaintiff will prosecute the suit to effect, and without delay; and that if the defendant recover judgment against him in the action, he will return the same property, if return thereof be adjudged, and will pay to the defendant all such sums of money as may be recovered against him, by such defendant in the said action, for any cause whatever.

Upon receipt of bond sheriff to deliver property and summon defendant.

SEC. 9. Upon the receipt of the bond above required, the sheriff shall forthwith proceed to deliver possession of the property named therein, to the plaintiff or his authorized agent.

Summons how served.

SEC. 10. The summons shall be served on the defendant by delivering to him personally, if he can be found, a copy of the writ; if he cannot be found, it may be served by leaving the same at his usual place of abode, with his wife, or with some person of proper age.

Officer may break open building, &c.

SEC. 11. If the property to be replevied, or any part thereof, be secured or concealed in any dwelling-house, or other building or enclosure, the officer shall publicly demand deliverance thereof, and if the same be not delivered by the defendant. or some other person, he shall cause such house, building or enclosure, to be broken open, and shall make replevin according to the writ, and if necessary he shall take to his assistance the power of his county.

When plaintiff may recover value of property.

SEC. 12. If the goods and chattels, specified in any writ of replevin, have not been delivered to the plaintiff, he may proceed in the action for the recovery of the said goods and chattels, or the value thereof.

Sheriff to return writ and bond.

SEC. 13. The sheriff shall return the writ immediately after the service thereof, and shall transmit therewith the bond to him delivered.

What to state in his return.

SEC. 14. The sheriff shall state in his return fully in what manner he has executed the writ.

When defendant's appear-

SEC. 15. If the sheriff return to the writ of replevin, that the defendant has been duly summoned in either of the modes herein before prescribed, the clerk of the court shall thereupon enter the appearance of such defendant, and thereafter proceedings shall be had against such defendant as if he had actually appeared.

ance to be entered, &c.

SEC. 16. The plaintiff shall declare within ten days after the return of the writ, and serve a copy of the declaration upon the defendant, his agent or attorney, if to be found.

When plaintiff to declare, &c.

SEC. 17. The defendant shall plead to such declaration within twenty days after service upon him, as above stated, of a copy thereof.

When defendant to plead.

SEC. 18. In case the defendant, his agent or attorney cannot be found, so that a copy of the declaration can be served upon him, he shall have until the third day of the first term to plead in such case.

If defendant not served with copy when may plead.

SEC. 19. All actions of replevin shall be for trial at the first term after the commencement thereof, and shall not be continued on the part of the plaintiff except for the same causes required to be shown for a second continuance in other cases, and on the part of the defendant for the same causes required in other cases.

Actions of replevin, when to be tried and how continued.

SEC. 20. Where the original taking of the goods is not complained of, but the action is founded on the wrongful detention of such goods, the declaration shall be conformed to the writ, and shall allege with requisite certainty of time, place and value, that the defendant received the property described in the writ from the plaintiff, or from some other person, (naming him, if his name be known,) to be delivered to the plaintiff, when thereunto afterwards requested; and that the defendant, although requested so to do, has not delivered the same to the plaintiff, but refuses so to do, and detains the same property to the damage of the plaintiff; and where the action is founded on the wrongful taking and detention of the property, but such property, for any reason, shall not have been replevied and delivered to the plaintiff, the declaration shall not only allege such wrongful taking, but shall also allege that the defendant continues to detain such property.

What declaration to allege, &c.

SEC. 21. It shall not be necessary for the plaintiff to state in his declaration a place certain, within the town or village, as that where the property was taken.

The particular place of taking need not be specified.

SEC. 22. When the wrongful taking of the property described in the declaration is complained of therein, the plea of the general issue shall be as heretofore, that the defendant did not take the goods and chattels described in the declaration, or any of them, in manner and form as the plaintiff has alleged.

Plea of general issue, &c.

SEC. 23. When the action is founded on the wrongful detention of the goods, and the original taking is not complained of, the plea of the general issue shall be, that the defendant does not detain the goods and chattels specified in the declaration, or any part thereof, in manner and form as therein alleged; and such plea shall put in issue, not only the detention of such goods and chattels, but also the property of the plaintiff therein.

Ib., and effect thereof.

SEC. 24. With the plea, denying the taking or detention of the property claimed, the defendant may give notice of any matters, which if properly pleaded by avowry, cognizance or plea, would be a bar to the action, and which, if the goods have been replevied, would entitle him to a return thereof; and he may give such mat-

Notice may be given of matters that may be pleaded.

ters in evidence on the trial, in the same manner, and with the like effect, as if the same had been so pleaded.

Plaintiff may reply several matters, &c.

SEC. 25. The plaintiff may plead in answer to any plea as many several matters as he shall think necessary for his defence, and may give evidence of any matters in answer to defendant's notice, that he may find necessary to his defence.

When jury to assess damages.

SEC. 26. If upon the trial of the cause the verdict be in favor of the plaintiff, the same jury shall assess the damages which he has sustained by the unjust taking or detention of the property replevied; but if the judgment pass for the plaintiff by default, or upon an issue of law, a writ of inquiry shall be awarded to the sheriff of the proper county, to ascertain his damages for such caption and detention.

When writ of inquiry shall issue.

Jury to assess the value of the property.

SEC. 27. It shall also be the duty of the jury upon such trial of the cause, or on the execution of such writ of inquiry, as the case may be, to assess the value of the goods and chattels specified in the declaration.

When judgment to be that the goods be replevied, or for the value thereof.

SEC. 28. If the goods and chattels specified in the declaration, shall not have been replevied and delivered to the plaintiff, such plaintiff, in case he shall recover judgment upon the whole record, shall be entitled, in addition to his judgment for damages and costs, to a further judgment, that such goods and chattels be replevied and delivered to him without delay, or in default thereof, that such plaintiff do recover from the defendant the value of such goods and chattels, as the same shall have been assessed by the jury on the trial or upon the writ of inquiry.

Execution on such judgment, what to command officer.

SEC. 29. The execution to be issued upon such judgment, shall command the sheriff to levy the plaintiff's damages and costs of the goods and chattels, lands and tenements of the defendant, as in other executions against property, and also to replevy the goods and chattels described in the declaration, which shall also be specified in the execution, and to deliver them to the plaintiff, if they can be found within his county; and if the same cannot be so found, then that he levy the value of such goods and chattels, specifying the same, together with the aforesaid damages and costs of the goods and chattels, lands and tenements of the defendant, as above provided.

How to be executed, &c.

SEC. 30. The sheriff shall proceed in the same manner to collect any moneys directed to be collected upon such execution, as upon executions against property in personal actions; and he shall possess the same powers in respect to the replevying of the property described therein, as are herein provided upon the execution of writs of replevin. If the goods and chattels described in the execution are replevied and delivered to the plaintiff, they shall be irrepleviable by the defendant.

If property has been delivered to plaintiff and he discontinue, &c., how judgment to be entered for defendant.

SEC. 31. If the property specified in the writ has been delivered to the plaintiff, and the defendant recover judgment by discontinuance or non-suit, such judgment shall be that the defendant have return of the goods and chattels replevied, unless he shall elect to waive such return pursuant to any of the provisions hereinafter contained; and also that he recover the damages sustained by him by reason of the detention of such goods and chattels, which damages shall be assessed by a writ of inquiry.

Sec. 32. Whenever a defendant shall obtain judgment by default or in any other manner, after having pleaded any matter which, if admitted by the plaintiff, would be sufficient in law to entitle such defendant to a return of the property replevied, he shall be entitled to the like judgment as provided in the last section.

How judgment to be entered for defendant in certain other cases.

Sec. 33. The defendant, whenever he shall be entitled to a return of the property replevied, instead of taking judgment for such return as above provided, may take judgment for the value of the property replevied, in which case such value shall be assessed by the jury on the trial, or by a writ of inquiry, as the case may require.

Ib.

Sec. 34. In every action of replevin, if the jury shall find the property of part of the goods and chattels replevied to be in the plaintiff, and the residue thereof to be in the defendant, they shall, without reference to the estimated value in the replevin bond, find and certify in their verdict the value of the part belonging to the plaintiff, and, also, the value of the part belonging to the defendant, as it was at the time it was replevied; and in such case the defendant shall have judgment for the value of his part of the property as replevied, or judgment of return of such part in the discretion of the court.

How judgment and verdict to be rendered when jury find part of property for plaintiff and part for defendant.

Sec. 35. Whenever upon the trial of any action of replevin it shall appear that one party has a lien or claim upon the property in question, or a part thereof, to a part of its value only, and that the right of property in the same, subject to such lien or claim, shall be in the other party, in such case the verdict and judgment shall be according to the rights of the parties, and it shall be discretionary with the court whether the judgment shall be for the return of the property or for damages.

Ib, where one party has the right of property and the other a lien thereon.

Sec. 36. Whenever in an action of replevin there shall be no trial upon the issue, but it shall be suggested to the court that one party has a lien or claim upon the property in question, or a part thereof, to a part of its value only, and that the right of property in the same, subject to such lien or claim, shall be in the other party, the court shall have power to impannel and swear a jury, and in such case the verdict and judgment shall be as provided in the next preceding section.

When there is no trial upon the issue and one party has a lien, court may impannel a jury, &c.

Sec. 37. Whenever judgment shall be rendered against a plaintiff in an action of replevin, it shall be rendered against him and the securities in the bond given in his behalf in pursuance of the provisions of this chapter, if any such bond shall have been given, and execution shall issue against all, with the like effect as if they had been parties to the suit.

When judgment and execution to be against plaintiff and his sureties.

Sec. 38. Whenever a writ of inquiry shall be issued, pursuant to any provision contained in this chapter, the party suing out such writ shall give the adverse party, in case he shall have appeared in the cause in person, or by attorney, sufficient notice of the execution of such writ of inquiry.

Notice of execution of writ of inquiry to be given.

Sec. 39. If the property specified in the writ has not been replevied and delivered to the plaintiff, and the defendant recover judgment, such judgment shall be for costs merely, including the

Where property is not replevied and defendant recovers judgment, how same to be entered.

fees of the sheriff and jury, upon a claim of property, if one was interposed.

How judgments docketed and effect of same.

SEC. 40. Every judgment recovered in the action of replevin, whether in favor of the plaintiff or defendant, for any damages or costs, or for any other sum of money, shall be docketed in the same manner, and shall have the like effect, as a charge upon the real estate and chattels real, of the party against whom it is recovered, as judgments in personal actions.

When judgment against plaintiff no second writ to issue, &c.

SEC. 41. Whenever judgment shall pass against the plaintiff in replevin, whether by default or otherwise, and a return of the property replevied is awarded, no writ of second deliverance shall be allowed, nor shall any second or other writ of replevin be brought for the same cause; but the plaintiff in replevin shall not thereby be barred from bringing an action of trespass or trover for the same property, unless the judgment in the action of replevin shall have passed against him on the merits.

Writ of withernam abolished.

SEC. 42. The writ of withernam, and all writs of second deliverance, are hereby abolished.

In replevin against sheriff, all process to be awarded to coroner

SEC. 43. Whenever an action of replevin shall be brought by or against the sheriff of any county, the writ, and all process in the cause, shall be awarded to, and executed by, the coroner of the county.

CHAPTER 120.

OF THE LIEN OF MECHANICS AND OTHERS.

What property liable to lien for labor and materials, &c.

SECTION 1. All and every dwelling house hereafter constructed and erected within the State of Wisconsin, together with the right, title and interest of the person or persons owning such dwelling house or other buildings, in and to the land upon which the same shall be situated, not exceeding forty acres, or if erected within the limits of any city, town or village plot, the lot on which such dwelling house or other building shall be situated, not exceeding in extent one acre, shall be subject to the payment of the debts contracted for, or by reason of any work done, or materials found, and provided by any brick maker, brick layer, stone cutter, mason, lime merchant, carpenter, painter and glazier, iron monger, plasterer and lumber merchant, or any other persons employed in erecting or furnishing materials for and in the erection and construction of such house or other building, before any other lien which originated subsequent to the commencement of such house or other building.

When persons employed by contractor to give notice to owner to entitle them to a lien.

SEC. 2. If such dwelling house or other building, or any portion thereof, shall have been constructed under contract or contracts, entered into by the owner thereof, or his or her agent, with any person or persons, no person, who may have done work for such contractor or contractors, or furnished materilas for him or them, on his or their order or authority, shall have or possess any lien on said house or other building, for work done or materials so furnished, unless the person or persons so employed by such contractor to do work or furnish materials for such building, shall, within thirty days after having performed work, or having furnished materials as aforesaid, give notice in writing to the owner or owners of such building, or to his or their agents, that he or they are so employed to work or to furnish, or have furnished, materials, and that they claim the benefit of the lien granted by this chapter.

Extent of lien of sub-contractor.

SEC. 3. No claim of any sub-contractor shall be a lien under this chapter, except so far as the owner may be indebted to the contractor at the time of giving such notice, as aforesaid, of such claim, or may become indebted afterwards to him as such contractor.

Lien to continue but one year unless petition filed and suit commenced.

SEC. 4. No such debt for work and materials shall remain a lien upon such lands, houses or other buildings, longer than one year from the time of furnishing of materials or the performance of the labor, unless a petition or claim for the same be filed, and an action for the recovery thereof be instituted, within the said year.

What petition to contain and where filed.

SEC. 5. The claim or petition shall contain a brief statement of the contract or demand on which it is founded, and of the amount due thereon, with a description of the premises, and all other material facts in relation thereto, and may be filed in the county or circuit court of the proper county, either in term time or in vacation, either at or before the commencement of suit, and no transfer of the premises or property by the owner, agent or occupant, shall in any way bar any claimants from availing themselves of the provisions of this chapter.

Transfer by owner not to effect lien.

When claimant to enter satisfaction of his claim.

SEC. 6. Each and every person having received satisfaction for his or their debt, for which a claim is or has been or shall be filed, or action brought, shall, at the request of any person interested in the building on which the same was a lien, or in having the same lien removed, or of his or their legal representatives, on payment of the costs of the claim or action, and on tender of the cost of office for entering satisfaction, within six days after such request made, enter satisfaction of the claim in the office where such claim was or shall be filed in such action brought, which shall forever thereafter discharge, defeat and release the same.

Penalty for neglect.

SEC. 7. If such person, having received satisfaction as aforesaid, by himself or his attorney, shall not, within six days after request and payment of the costs of the claim or action and tender as aforesaid, by himself, or his attorney duly authorized, enter satisfaction as aforesaid, he, she, or they neglecting so to do, shall forfeit and pay, unto the party or parties aggrieved, any sum of money not exceeding one half of the debt for which the claim is filed or action brought as aforesaid, to be sued for and recovered by the person or persons damnified, in like manner as other debts are now recovered by existing laws for the recovery of debts.

Persons having a claim filed, may recover same by personal action, &c.

SEC. 8. In all cases of lien created by this act, the person having a claim filed in accordance with its provisions, may proceed to recover it by personal action against the debtor, his executors or administrators, or when the plaintiff is a sub-contractor, by a scire facias against the owner of the building.

When judgment rendered for plaintiff how

SEC. 9. When the suit is commenced by summons, and judgment rendered for the plaintiff, execution may issue, and be levied execution levied and premises sold.

upon the premises subject to such lien, and sale thereof be made in the manner prescribed by law, in ordinary cases.

Ib.

SEC. 10. If any part of the premises can be separated from the residue, and sold without damage to the whole, and if the value thereof shall be sufficient to satisfy the judgment which may be rendered, and costs of suit and expenses of sale, the court may order a sale of that part, if it shall appear to be most for the interest of the parties concerned:

How officer to give notice of sale; to execute deed and effect of same.

SEC. 11. The officer who makes the sale shall give notice of the time and place appointed therefor, in the manner prescribed in relation to the sale of real estate on executions, unless the court shall order other and different notice to be given; and such officer shall give to the purchaser a deed of conveyance of the premises sold, which shall be valid and effectual to pass all the right, title and interest of the defendant in and to *said* premises absolutely, whether the same be held in fee simple, for life, or for years.

Persons performing labor on land, timber or lumber may have lien and enforce same.

SEC. 12. Any person or persons performing manual labor upon any land, timber or lumber, for or on account of the owner, agent, or assignee thereof, may avail themselves of the foregoing provisions of this chapter, and upon complying with the requirements thereof shall have a like lien thereon for the amount of work and labor done and performed, and the said lien may be carried into force and effect pursuant to the foregoing provisions of this chapter.

Judgment for plaintiff to be for damages and costs.

SEC. 13. In all cases under the foregoing provisions of this chapter, whenever judgment shall be rendered in favor of the plaintiff, such judgment shall be for damages and costs of suit.

Of certain Liens upon Personal Property.

Lien of mechanics and artizans on personal property, and how enforced.

SEC. 14. Any mechanic or artizan who shall make, alter or repair any article of personal property at the request of the owner, or legal possessor of such property, such mechanic or artizan shall have a lien on such property so made, altered or repaired, for his just and reasonable charges for his work done and materials furnished, and may hold and retain the possession of the same until such just and reasonable charges shall be paid, and if not paid for the space of six months after the work shall have been done, such mechanic or artizan may proceed to sell the property by him so made, altered or repaired, at public auction, by giving three weeks public notice of such sale, by advertisement in some newspaper published in the county in which the work may be done, or if there be no such newspaper, then by posting of notices of such sale in three of the most public places in the town where such work was done, and the proceeds of said sale shall be applied first to the discharge of such lien, and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

CHAPTER 121.

OF THE FORECLOSURE OF MORTGAGES BY ADVERTISEMENT.

Certain mortgages may be foreclosed by advertisement.

SECTION 1. Every mortgage of real estate, containing therein a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner hereinafter specified.

Requisites to entitle party to foreclose.

SEC. 2. To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it shall be requisite,

1. That some default in a condition of such mortgage shall have occurred, by which the power to sell became operative:

2. That no suit or proceeding shall have been instituted at law, to recover the debt then remaining secured by such mortgage, or any part thereof; or if any suit or proceeding has been instituted, that the same has been discontinued, or that an execution upon the judgment rendered therein has been returned unsatisfied, in whole or in part: and,

3. That the mortgage containing such power of sale has been duly recorded; and if it shall have been assigned, that all the assignments thereof shall have been recorded.

Installments to be considered as separate mortgages, &c.

SEC. 3. In cases of mortgages given to secure the payment of money by installments, each of the installments mentioned in such mortgage, after the first, shall be taken and deemed to be a separate and independent mortgage, and such mortgage for each of such installments may be foreclosed in the same manner, and with the like effect, as if such separate mortgage were given for each of such subsequent installments, and a redemption of any such sale by the mortgagor shall have the like effect as if the sale for such installments had been made upon an independent prior mortgage.

Notice, how given.

SEC. 4. Notice that such mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them. shall be given by publishing the same for six sucessive weeks, at least once in each week, in a newspaper printed in the county where the premises intended to be sold, or some part of them, are situated, if there be one; and if no newspaper be printed in such county, then such notice shall be published in a paper published at the seat of government.

What to specify.

SEC. 5. Every such notice shall specify,

1. The names of the mortgagor and of the mortgagee, and the assignee of the mortgage, if any:

2. The date of the mortgage, and when recorded:

3. The amount claimed to be due thereon at the date of the notice:

4. A description of the mortgaged premises, conforming substantially with that contained in the mortgage: and,

5. The time and place of sale.

Sale, how where and by whom made.

SEC. 6. The sale shall be at public vendue, between the hour of nine o'clock in the forenoon and the setting of the sun, in the county in which the premises to be sold, or some part of them, are situated, and shall be made by the person appointed for that purpose in the mortgage, or by the sheriff, under sheriff, or a deputy sheriff of the county, to the highest bidder.

How postponed.

SEC. 7. Such sale may be postponed from time to time, by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until the time to which the sale shall be postponed, at the expense of the party requesting such postponement.

Distinct tracts, &c, to be sold separately.

SEC. 8. If the mortgaged premises consist of distinct farms, tracts or lots, they shall be sold separately, and no more farms, tracts or lots shall be sold than shall be necessary to satisfy the amount due on such mortgage at the date of the notice of sale, with interest, and the costs and expenses allowed by law.

Mortgagee &c., may purchase.

SEC. 9. The mortgagee, his assigns, or his or their legal representatives, may, fairly and in good faith, purchase the premises so advertised, or any part thereof, at such sale.

Certificate of sale to purchaser, duplicate to be filed, &c.

SEC. 10. Whenever any lands and tenements shall be sold by virtue of a power of sale contained in any mortgage, it shall be the duty of the officer or other person making the sale, to give to the purchaser or purchasers, a certificate in writing, under seal, setting forth a description of each tract or parcel of the premises sold, the sum paid therefor, and the time when the purchaser or purchasers will be entitled to a deed for the same, unless they shall be redeemed as provided in this chapter; and such officer shall, within ten days from the time of sale, file in the office where the mortgage is recorded, a duplicate of such certificate signed by him, and such duplicate certificate, or a copy certified by the register, shall be taken, and deemed evidence of the facts therein contained.

When mortgagor, &c., may redeem, and how, &c.

SEC. 11. It shall be lawful for the mortgagor, his heirs, executors, administrators or assigns, whose lands or tenements shall be sold in conformity with the provisions of this chapter, within two years from and after such sale, to redeem such lands or tenements, or any distinct parcel or tract thereof separately sold, by paying to the purchaser or purchasers, his or their executors, administrators or assigns, or to the proper sheriff, under sheriff, or deputy sheriff, the sum of money which was bid therefor, together with interest on such purchase money, at the rate of ten per centum per annum, from the time of such sale; and such payment being made as aforesaid, the said sale and the certificate granted thereon as aforesaid, shall be null and void, anything in this chapter to the contrary notwithstanding; and the bail of the said sheriff shall be responsible for the faithful payment to the purchaser aforesaid, of all money received by him, or any of his deputies aforesaid:

How long mortgagor may retain possession of premises sold.

Provided, that in every case the mortgagor may retain full possession in trust for the mortgagee, or purchaser of all premises mortgaged by him, until the title shall absolutely vest in the purchaser of such mortgaged premises, according to the provisions of this chapter.

When and how deed to be executed to purchaser, &c

SEC. 12. If such mortgaged premises, so sold as aforesaid, shall not be redeemed as aforesaid, it shall be the duty of the officer, or his successor in office, or other person who shall have sold the same, or his executor or administrator, or some person appointed by the circuit court for that purpose, to complete such sale, by executing a deed of the premises so sold, to the original purchaser or to the creditor who may have acquired the title of such original purchaser; or to the creditor who may have purchased such title from any other purchaser, or to the assignee as the case may be, of the certificate of sale.

Surplus money to be paid to mortgagor, &c.

SEC. 13. If, after sale of any real estate made as herein prescribed, there shall remain in the hands of the officer or other person making the sale, any surplus money, after satisfying the mortgage on which such real estate was sold, and payment of the costs and expenses of such foreclosure and sale, the surplus shall be paid over by such officer or other person, on demand, to the mortgagor, his legal representatives or assigns.

Proceedings to perpetuate the evidence of sale.

SEC. 14. Any party desiring to perpetuate the evidence of any sale made in pursuance of the provisions of this chapter, may procure,

1. An affidavit of the publication of the notice of sale, and of any notice of postponement, to be made by the printer of the newspaper in which the same was inserted, or by some person in his employ knowing the facts: and,

2. An affidavit of the fact of any sale pursuant to such notice, to be made by the person who acted as auctioneer at the sale, stating the time and place at which the same took place, the sum bid, and the name of the purchaser.

Ib.

SEC. 15. The affidavits specified in the last preceding section, may be taken and certified by any officer authorized by law to administer oaths.

Ib., and effect of affidavits, &c. as evidence.

SEC. 16. Such affidavits shall be recorded at length by the register of deeds of the county in which the premises are situated, in a book kept for the record of mortgages; and such original affidavits, the record thereof, and certified copies of such record, shall be presumptive evidence of the facts therein contained.

Duty of register in relation thereto.

SEC. 17. A note referring to the page and book where the evidence of any sale having been made under a mortgage is recorded, shall be made by the register recording such evidence, in the margin of the record of such mortgage, if such record be in his office.

What shall be sufficient to pass title, and effect of conveyance.

SEC. 18. A record of the affidavits aforesaid, and of the deed executed on the sale of the premises, shall be sufficient to pass the title thereto, and the said conveyance shall be an entire bar of all claim or equity of redemption of the mortgagor, his heirs and representatives, and of all persons claiming under him or them, by virtue of any title subsequent to such mortgage; but no title accruing prior to the execution of such mortgage, shall be affected thereby.

Subsequent mortgagee may satisfy prior mortgage, &c.

SEC. 19. Any person to whom a subsequent mortgage may have been executed, shall be entitled to the same privilege of redemption of the mortgaged premises, that the mortgagor might have had, or of satisfying the prior mortgage; and shall by such satisfaction acquire all the benefits to which such prior mortgagee was or might have been entitled.

When mortgagee bids in premises no conveyance need be executed, &c.

SEC. 20. When the mortgaged premises, or any part of them, shall have been purchased at such sale by the mortgagee, his legal representatives, or his or their assigns, as herein before provided, the affidavits of the publication and affixing notice of sale, and of the circumstances of such sale, shall be evidence of the sale, and of the foreclosure of the equity of redemption, as herein specified, without any conveyance being executed, in the same manner, and with the like effect as a conveyance executed by a mortgagee, upon such sale, to a third person.

CHAPTER 122.

OF THE COLLECTION OF PENALTIES, FORFEITURES AND FINES.

What penalties &c, may be recovered by action

SECTION 1. In all cases not otherwise specially provided for by law, where a pecuniary penalty or foreiture shall be incurred by any person, and the act or omission, for which the same is imposed, shall not also be a misdemeanor, such penalty or forfeiture may be recovered in an action of debt, or in an action of assumpsit; and if it be a forfeiture of any property, it may be sued for and recovered in an action of trover, or other appropriate action.

Action how brought and conducted.

SEC. 2. Every such action, unless otherwise directed, shall be brought in the name of the State of Wisconsin, and shall be conducted and prosecuted in the same manner as personal actions, and shall be subject to all the provisions of law concerning personal actions, not repugnant to the provisions of this chapter.

How to declare in debt.

SEC. 3. In actions of debt brought to recover any penalty or forfeiture imposed by any statute, it shall be sufficient, without setting forth the special matter, to allege in the declaration, that the defendant is indebted to the plaintiff in the amount of such penalty or forfeiture; whereby an action hath accrued according to the provisions of the statute by which such penalty or forfeiture is imposed, specifying the section and chapter, as the case may require, or, in some other similar terms, referring to such statute.

Ib., in assumpsit.

SEC. 4. Whenever an action of assumpsit shall be brought for the recovery of any penalty or forfeiture imposed by any statute, it shall be sufficient, without setting forth the special matter, to allege in the declaration, that the defendant, being indebted to the plaintiff in the amount of such penalty or forfeiture, according to the provisions of the statute by which such penalty or forfeiture is imposed, referring to such statute as prescribed in the last section, undertook and promised to pay the same.

Ib, in trover.

SEC. 5. If an action of trover be brought to recover any goods or other things forfeited by the provisions of any statute, the declaration may allege that such goods or other things were forfeited according to the provisions of such statute, referring to the same as prescribed in the foregoing sections, and that the defendant converted the same to his own use, without setting forth the special matter.

Plea and evidence.

SEC. 6. To every declaration for a penalty or forfeiture, the defendant may plead the general issue, which shall be in the same form as in personal actions; and may give in evidence under such plea any special matter in bar of the action, or in discharge of the defendant therefrom, in the same manner, and with the like effect as if a special notice thereof had been given.

Where amount is not specified.

Sec. 7. When a penalty or forfeiture is imposed by law for any act or omission, not exceeding any specified sum, an action may be brought for the highest sum so specified; and the jury, or justice before whom the trial shall be had, shall award the sum so specified, to the plaintiff, or such part thereof, within the limitation prescribed by law, as shall be deemed proportionate to the offence.

When may be recovered by indictment.

Sec. 8. In all cases where the penalty or foreiture shall be one hundred dollars or more, such penalty or forfeiture may be recovered by indictment in the proper court of the county.

When act or omission to be a misdemeanor.

Sec. 9. When any act or omission is punishable according to law by a fine, penalty, or forfeiture. and imprisonment, or by such fine, penalty, or forfeiture, or imprisonment, in the discretion of the court, such act or omission shall be deemed a misdemeanor for the purposes contemplated in this chapter.

Duty of chairman of town supervisors.

Sec. 10. It shall be the duty of the chairman of town supervisors, unless otherwise specially provided, whenever he shall know, or have good reason to believe, that any penalty or forfeiture has been incurred within his town, which shall be recoverable by action before a justice of the peace, according to the foregoing provisions of this chapter, forthwith to commence and prosecute a suit, in the name of this state, for the recovery thereof.

Duty of other town officers.

Sec. 11. It shall be the duty of every other town officer, who shall know, or have good reason to believe, that any penalty or forfeiture has been incurred within his town, forthwith to give notice thereof to such supervisor.

When supervisor to give notice to district attorney.

Sec. 12. Whenever any such supervisor shall know, or have good reason to believe, that any penalty or forfeiture has been incurred within his town, which cannot be recovered before a justice of the peace, it shall be his duty forthwith to give notice thereof to the district attorney of his county.

Duties of district attorney.

Sec. 13. In the cases mentioned in the preceding section, and in all other cases where the district attorney shall know, or have good reason to believe, that a penalty or forfeiture has been incurred within his county; it shall be the duty of such attorney, without delay, to prosecute for such penalty or forfeiture; and in all cases where any suit shall be instituted by such supervisor, as provided in this chapter, it shall be the duty of such attorney, if requested by such supervisor, to attend to and conduct such suit in behalf of the plaintiff.

Moneys to be paid over to county treasurer, &c.

Sec. 14. All sums of money collected on account of any penalty or forfeiture, in pursuance of the foregoing provisions of this chapter, or otherwise, shall be paid by the officer or person collecting or receiving the same, to the treasurer of the county within which such penalty or forfeiture was incurred, within twenty days after the collection or receipt thereof, to be by him paid into the state treasury, as provided by law, to the credit of the school fund.

Payment over, how compelled.

Sec. 15. If any sheriff, justice of the peace, or other officer or person, shall neglect to pay over any moneys collected or received by him on account of any penalty or forfeiture, within the time limited in the preceding section, the county treasurer shall proceed to collect the same by action of debt or assumpsit, in his name of office, together with twelve per cent. interest thereon.

CHAPTER 123.

OF PROCEEDINGS TO COMPEL THE DELIVERY OF BOOKS AND PAPERS BY PUBLIC OFFICERS TO THEIR SUCCESSORS.

Books and papers to be delivered to successor. Penalty.

SECTION 1. Whenever any person shall be removed from office, or the term for which he shall have been elected or appointed shall expire, he shall, on demand, deliver over to his successor all the books and papers in his custody as such officer, or in any way appertaining to his office, and every person violating this provision shall be deemed guilty of a misdemeanor.

Complaint by successors.

SEC. 2. If any person shall refuse or neglect to deliver over to his successor, any books or papers, as required in the preceding section, such successor may make complaint thereof to any judge of a court of record for the circuit or county where the person so refusing shall reside.

Delivery how enforced.

SEC. 3. If such judge be satisfied by the oath of the complainant, and such other testimony as may be offered, that any such books or papers are withheld, he shall grant an order, directing the person so refusing to show cause before him, within some short and reasonable time, why he should not be compelled to deliver the same.

Judge to inquire into complaint.

SEC. 4. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order, such judge shall proceed to inquire into the matters set forth in the complaint.

Affidavit of delivery of books and papers.

SEC. 5. If the person charged with withholding such books and papers, shall make affidavit before such judge, that he has truly delivered over to his successor all such books and papers in his custody, or appertaining to his office, within his knowledge, all further proceedings before such judge shall cease, and the person complained against shall be discharged.

When person charged may be committed.

SEC. 6. If the person complained against shall not make such affidavit, and it shall appear that any such books or papers are withheld, the judge before whom such proceedings shall be had, shall, by warrant, commit the person so withholding, to the jail of the county, there to remain until he shall deliver such books and papers, or be otherwise discharged according to law.

Search warrant when to be issued.

SEC. 7. In the case stated in the last section, if required by the complainant, such judge shall also issue his warrant, directed to the sheriff or any constable of the county, commanding them in the day time to search such places as shall be designated in such warrant, for such books and papers as belonged to the officer so removed, or whose term of office expired, in his official capacity, and which appertained to such office, and seize and bring them before the judge issuing such warrant.

Proceedings thereupon.

SEC. 8. Upon any books or papers being brought before such judge, by virtue of such warrant, he shall inquire and examine whether the same appertain to the office from which the officer so refusing was removed, or of which the term expired, and if the same pertain to such office, he shall cause them to be delivered to the complainant.

Books and papers how obtained when officer dies, &c.

SEC. 9. If any person appointed or elected to any office, shall die, or his office shall in any way become vacant, and any books or papers belonging or appertaining to such office shall come to the hands of any person, the successor in any such office may, in like manner as herein before prescribed, demand such books or papers from the person having the same in his possession; and if withheld, an order may be obtained, and the person charged may in like manner make affidavit of the delivery of all such books and papers that ever came to his possession; and in case of omission to make such affidavit, and to deliver up the books and papers so demanded, such person may be committed to jail, and a search warrant may be issued, and the property seized may be delivered to the complainant, as herein before prescribed.

TITLE XXVI.

OF WRITS OF HABEAS CORPUS, MANDAMUS AND PROHIBITION, AND OF INFORMATIONS IN THE NATURE OF A QUO WARRANTO.

CHAPTER 124. Of the writ of habeas corpus.
125. Of writs of mandamus and prohibition.
126. Of informations in the nature of a quo warranto, and in certain other cases.

CHAPTER 124.

OF THE WRIT OF HABEAS CORPUS.

Who entitled to writ of habeas corpus.

SECTION 1. Every person imprisoned or otherwise restrained of his liberty, except in the cases in the following section specified, may prosecute a writ of habeas corpus, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful.

Who not entitled to writ.

SEC. 2. The following persons shall not be entitled to prosecute such writ: persons committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of any execution issued upon such judgment or decree; but no order of commitment for any alleged contempt, or upon proceedings as for contempt, to enforce the rights or remedies of any party, shall be deemed a judgment or decree within the meaning of this section, nor shall any attachment or other process issued upon any such order be deemed an execution within the meaning of this section.

Application how, by whom and to whom made.

SEC 3. Application for such writ shall be made by petition signed either by the party for whose relief it is intended, or by some person in his behalf, as follows: to any judge of the supreme, circuit or county courts, being within the county where the prisoner is detained, or if there be no such officer within such county, or if he be absent, or for any cause be incapable of acting, or have refused to grant such writ, then to some officer having such authority residing in any adjoining county.

Applicant when to make oath, &c

SEC. 4. Whenever application for any such writ shall be made to any officer not residing within the county where the prisoner shall be detained, he shall require proof by the oath of the party applying, or by other sufficient evidence, that there is no officer in such county authorized to grant the writ, or if there be one, that he is absent or has refused to grant such writ, or for some cause to be specially set forth is incapable of acting, and if such proof be not produced the application shall be denied.

What petition for writ must state.

SEC. 5. The petition must state in substance,

1. That the person in whose behalf the writ is applied for is im-

prisoned or restrained in his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming both parties if their names are known, or describing them if they are not:

2. That such person is not committed or detained by virtue of any process, judgment, decree or execution specified in the second section of this chapter:

3. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the party:

4. If the confinement or restraint is by virtue of any warrant, order or process, a copy thereof must be annexed, or it must be averred that by reason of such prisoner's being removed or concealed before the application, a demand of such copy could not be made, or that such demand was made and the legal fees therefor tendered to the officer or person having such prisoner in his custody, and that such copy was refused:

5. If the imprisonment be alleged to be illegal the petition must also state in what the alleged illegality consists:

6. It must be verified by the oath of the party making the application.

Writ to be granted without delay.

Sec. 6. Any officer empowered to grant any writ applied for under this chapter, to whom such petition shall be presented, shall grant such writ without delay, unless it shall appear from the petition itself, or from the documents annexed, that the party applying therefor, is by the provisions of this chapter prohibited from prosecuting such writ.

Form of writ.

Sec. 7. Every writ of habeas corpus issued under the provisions of this chapter, shall be substantially in the following form:

"In the name of the state of Wisconsin, to the sheriff of, &c. (or to A. B.)

"You are hereby commanded to have the body of C. D. by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged, before E. F. judge of the circuit court, (or county court), as the case may be, at &c., on &c., (or immediately after the receipt of this writ), to do and receive what shall then and there be considered concerning the said C. D. And have you then then there this writ.

Witness, &c."

Writ not to be disobeyed for any defect of form, &c.

Sec. 8. Such writ of habeas corpus shall not be disobeyed for any defect of form. It shall be sufficient,

1. If the person having the custody of the prisoner be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation; and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person:

2. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described in any other way so as to designate the person intended.

Penalty for refusing writ.

Sec. 9. If any officer authorized by the provisions of this chapter to grant writs of habeas corpus shall wilfully refuse to grant

CHAPTER 124.

such writ when legally applied for, he shall forfeit for every such offence, to the party aggrieved, one thousand dollars.

What person on whom writ is served to state in return.

SEC. 10. The person upon whom any such writ shall have been duly served, shall state in his return, plainly and unequivocally,

1. Whether he have or have not the party in his custody, or under his power or restraint:

2. If he have the party in his custody or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large:

3. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced, and exhibited on the return of the writ, to the officer before whom the same is returnable:

4. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority, such transfer took place.

When return to be verified by oath.

The return must be signed by the person making the same and, except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by his oath.

Officer to bring body in certain cases.

SEC. 11. The person or officer on whom the habeas corpus shall have been served, shall also bring the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

Person refusing to obey writ, to be imprisoned.

SEC. 12. If the person upon whom such writ shall have been duly served, shall refuse or neglect to obey the same by producing the party named in such writ, and making a full and explicit return to every such writ within the time required by the provisions of this chapter, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the officer before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person, directed to the sheriff of any county in this state, and commanding him forthwith to apprehend such person, and to bring him immediately before such officer; and on such person being so brought, he shall be committed to close custody in the jail of the county in which such officer shall be, until he shall make return to such writ, and comply with any order that may be made by such officer in relation to the person for whose relief such writ shall have been issued.

Attachment, when directed to coroner.

SEC. 13. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner or other person to be designated therein, who shall have full power to execute the same, and such sheriff upon being brought up, may be committed to the jail of any county other than his own.

Officer may have party brought before him, &c.

SEC. 14. The officer by whom any such attachment may be issued, may also at the same time or afterwards, issue a precept to the same sheriff or other person to whom such attachment shall have been directed, commanding him to bring forthwith before such officer, the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such sheriff or person, until he shall be discharged, bailed or remanded, as such officer shall direct.

Sheriff to have power of county.

SEC. 15. In the execution of such attachment or precept, or of either of them, the sheriff or other person to whom they shall be directed, may call to his aid the power of the county, as in other cases.

Cause of confinement inquired into.

SEC. 16. The officer before whom the party shall be brought on such writ, shall immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter or not.

When party set at liberty.

SEC. 17. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such officer shall discharge such party from the custody or restraint, under which he is held.

In what cases party remanded.

SEC. 18. It shall be the duty of the officer forthwith to remand such party, if it shall appear that he is detained in custody, either,

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction: or,
2. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree: or,
3. For any contempt specially and plainly charged in the commitment, by some court, officer or body having authority to commit for the contempt so charged: and,
4. That the time during which such party may be legally detained has not expired.

If prisoner in custody under civil process, in what cases may be discharged.

SEC. 19. If it appear on the return that the prisoner is in custody by virtue of civil process of any court legally constituted, or issued by any officer in the course of judicial proceedings before him authorized by law, such prisoner can only be discharged in one of the following cases:

1. Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person:
2. Where, though the original imprisonment was lawful, yet by some act, omission or event which has taken place afterwards, the party has become entitled to be discharged:
3. Where the process is defective in some matter of substance required by law, rendering such process void:
4. Where the process, though in proper form, has been issued in a case not allowed by law:
5. Where the person having the custody of the prisoner under such process, is not the person empowered by law to detain him: or
6. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

CHAPTER 124.

Legality of judgment, &c., not to be inquired into.

SEC. 20. But no officer on the return of any habeas corpus issued under this chapter, shall have power to inquire into the legality or justice of any judgment, decree or execution specified in the preceding second section.

Party when to be bailed.

SEC. 21. If it appear that the party has been legally committed for any criminal offence, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be guilty of such an offence, although the commitment be irregular, the officer before whom such party shall be brought, shall proceed to let such party to bail, if the case be bailable and good bail be offered, or if not, shall forthwith remand such party.

When party placed in custody.

SEC. 22. If the party be not entitled to his discharge and be not bailed, the officer shall remand him to the custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto; if not so entitled, he shall be committed by such officer to the custody of such officer or person as by law is entitled thereto.

In whose custody party to be until judgment given.

SEC. 23. Until judgment be given upon the return, the officer before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such officer shall be, or place him in such care or under such custody as his age and other circumstances may require.

Person interested to have notice.

SEC. 24. When it appears from the return to any such writ, that the party named therein is in custody on any process under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney, if he have one, if to be found within the county, shall have had sufficient notice of the time and place at which such writ shall have been made returnable.

When district attorney to be notified.

SEC. 25. When it shall appear from the return that such party is detained upon any criminal accusation, such officer shall make no order for the discharge of such party, until sufficient notice of the time and place at which such writ shall have been returned, or shall be made returnable, shall be given to the district attorney of the county in which such officer shall be, if to be found within the county.

Party may deny facts set forth in return, &c; how officer to proceed.

SEC. 26. The party brought before any such officer on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath; and thereupon such officer shall proceed in a summary way to hear such allegations and proofs as may be produced in support of such imprisonment or detention, or against the same, and to dispose of such party as the justice of the case may require.

Proceedings when party cannot be brought before officer issuing writ.

SEC. 27. Whenever from the sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot without danger be brought before the officer before whom the writ is made returnable, the party in whose custody he is may state that fact in his return to the writ, verifying the same by his oath; and if such officer be satisfied of the truth of such allegation, and the return be otherwise sufficient, he shall proceed to decide upon such return and to dispose of the matter; and if it appear that the person detained is illegally imprisoned, confined or restrained of his liberty, the officer shall grant a writ of discharge commanding those having such person in their custody to discharge him forthwith; and if it appear that such person is legally detained, imprisoned or confined, and is not entitled to be bailed, such officer shall cease from all further proceedings thereon.

Obedience to writ or order for discharge, how enforced.

SEC. 28. Obedience to any writ of discharge, or to any order for the discharge of any prisoner, granted pursuant to the provisions of this chapter, may be enforced by the officer issuing such writ or granting such order, by attachment, in the same manner as herein provided for a neglect to make a return to a writ of habeas corpus, and with the like effect in all respects; and the person guilty of such disobedience shall forfeit to the party aggrieved one thousand two hundred and fifty dollars, in addition to any special damages such party may have sustained.

Penalty.

Officer not liable for escape, &c., in obeying writ.

SEC. 29. No sheriff or other officer shall be liable to any civil action for obeying any such writ or order of discharge; and if any action shall be brought against such officer for suffering any person committed to his custody to go at large, pursuant to any such writ or order, he may, with his plea of the general issue, give notice of the same in bar of such action.

Person discharged not imprisoned again for same cause.

SEC. 30. No person who has been discharged by the order of any officer upon a habeas corpus issued pursuant to the provisions of this chapter, shall be again imprisoned, restrained or kept in custody for the same cause; but it shall not be deemed the same cause,

What not deemed same cause.

1. If he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offence, by the legal order or process of the court wherein he shall be bound by recognizance to appear, or in which he shall be indicted or convicted for the same offence: or,

2. If after a discharge for defect of proof, or for any material defect in the commitment in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offence: or,

3. If in a civil suit the party has been discharged for any illegality in the judgment or process herein before specified, and is afterwards imprisoned by legal process for the same cause of action: or,

4. If in any civil suit he shall have been discharged from commitment on mesne process, and shall be afterwards committed on execution in the same cause, or on mesne process in any other cause after such first suit shall have been discontinued.

Penalty for imprisoning person discharged.

SEC. 31. If any person shall knowingly recommit, imprison or restrain of his liberty, or cause to be recommitted, imprisoned or restrained of his liberty for the same cause, except as provided in the last section, any person so discharged, or shall knowingly aid or assist therein, he shall forfeit to the party so aggrieved one thousand two hundred and fifty dollars, and shall also be deemed guilty of a misdemeanor.

Person concealing party, &c entitled to writ,

SEC. 32. Any one having in his custody, or under his power, any person, who by the provisions of this chapter would be entitled to guilty of misdemeanor.

a writ of habeas corpus to inquire into the cause of his detention, who shall, with intent to elude the service of any such writ, or to avoid the effect thereof, transfer any such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor.

Concealing party, &c. after writ has issued, misdemeanor.

SEC. 33. Any one having in his custody, or under his power, any person for whose relief a writ of habeas corpus shall have been duly issued pursuant to the provisions of this chapter, who with intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor.

Assisting to conceal.

SEC. 34. Every person who shall knowingly aid or assist in the violation of either of the two last preceding sections, shall be deemed guilty of a misdemeanor.

Penalty for concealing.

SEC. 35. Every person convicted of any offence under either of the four last sections, shall be punished by fine or imprisonment, or both, in the discretion of the court in which he shall be convicted; but such fine shall not exceed one thousand dollars, nor such imprisonment six months.

Warrant to be issued in certain cases.

SEC. 36. Whenever it shall appear by satisfactory proof that any one is held in illegal confinement or custody, and that there is good reason to believe that he will be carried out of the state, or suffer some irreparable injury before he can be relieved by the issuing of a habeas corpus, any officer authorized to issue such writs may issue a warrant under his hand and seal, reciting the facts, and directed to any sheriff, constable, or other person, commanding such officer or person to take such prisoner and forthwith to bring him before such officer, to be dealt with according to law.

When warrant to order arrest of person having prisoner in custody.

SEC. 37. When the proof mentioned in the last section shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offence committed in the taking or detaining of such prisoner, the warrant shall also contain an order for the arrest of such person for such offence.

How executed.

SEC. 38. Any officer or person to whom such warrant shall be directed, shall execute the same by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the officer issuing the same; and thereupon the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of habeas corpus had been issued in the first instance.

Person having prisoner how dealt with.

SEC. 39. If the person having such prisoner in his custody, shall be brought before such officer as for a criminal offence, he shall be examined, committed, bailed or discharged by such officer, in like manner as in other criminal cases of the like nature.

Penalty for refusing copy of warrant.

SEC. 40. Any officer or other person refusing to deliver a copy of any order, warrant, process or other authority by which he shall detain any person, to any one who shall demand such copy, and tender the fees thereof, shall forfeit two hundred dollars to the person so detained.

When writ made returnable.

SEC. 41. Every writ of habeas corpus may be made returnable at a day certain or forthwith, as the case may require.

How indorsed.

SEC. 42. Every such writ shall be indorsed with a certificate that the same has been allowed, and with the date of such allowance, which indorsement shall be signed by the officer allowing the writ.

Writ, by whom and how served.

SEC. 43. Writs of habeas corpus can only be served by an elector of some county within this state ; and the service thereof shall not be deemed complete, unless the party serving the same shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable or marshal, the fees allowed by law for bringing up such prisoner ; nor unless he shall also give bond to such sheriff, coroner, constable or marshal, as the case may be, in a penalty double the amount of the sum for which such prisoner may be detained, if he be detained for any specific sum of money, and if not, then in the penalty of one thousand dollars, conditioned that such person will pay the charges of carrying back such prisoner, if he shall be remanded, and that such prisoner will not escape by the way, either going to or returning from the place to which he is to be taken.

Ib.

SEC. 44. Every writ of habeas corpus, issued pursuant to this chapter may be served by delivering the same to the person to whom it is directed ; if he can not be found it may be served by being left at the jail, or other place in which the prisoner may be confined, with any under officer or other person of proper age, having charge for the time of such prisoner.

Ib, when person conceals himself.

SEC. 45. If the person on whom the writ ought to be served conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling-house or of the place where the party is confined.

Sheriff, &c. to obey writ.

SEC. 46. It shall be the duty of every sheriff, coroner, constable or marshal, upon whom a writ of habeas corpus shall be served, whether such writ be directed to him or not, upon payment or tender of the charges allowed by law, and the delivery or tender of the bond herein prescribed, to obey and return such writ, according to the exigency thereof ; and it shall be the duty of every other person, upon whom such writ shall be served, having the custody, of the individual for whose benefit the writ shall be issued, to obey and execute such writ according to the command thereof, without requiring any bond or the payment of any charges, unless the payment of such charges shall have been required by the officer issuing such writ.

Petitioner, when to pay charges of bringing up prisoner.

SEC. 47. Every officer allowing a writ of habeas corpus, directed to any other than a sheriff, coroner, constable or marshal, may, in his discretion, require as a duty to be performed, in order to render the service thereof effectual, that the charges of bringing up such prisoner shall be paid by the petitioner ; and in such case he shall, in the allowance of the writ, specify the amount of such charges, so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services.

When prisoner to be produced.

SEC. 48. If the writ be returnable at a certain day, such return shall be made, and such prisoner shall be produced, at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced, within twenty-four hours; and the like time shall be allowed for every additional twenty miles.

Provisions of common law abrogated.

SEC. 49. The provisions of the common law, in regard to the writ of habeas corpus, treated of in this chapter, are hereby abrogated, except so much and such parts thereof as may be necessary to carry into full effect the provisions herein contained; and the authority of courts and officers to award such writ, or to proceed thereon by the common law, shall be exercised in conformity to the provisions of this chapter in all cases therein provided for.

Act not to restrain courts issuing writs in certain cases.

SEC. 50. Nothing contained in this chapter shall be construed to restrain the power of any court to issue a writ of habeas corpus, when necessary to bring before them any prisoner for trial, in any criminal case lawfully pending in the same court; or to bring in any prisoner to be examined as a witness, in any suit or proceeding, civil or criminal, pending in such court, when they shall think the personal attendance and examination of the witness necessary for the attainment of justice.

CHAPTER 125.

OF WRITS OF MANDAMUS AND PROHIBITION.

Return to first writ of mandamus.

SECTION 1. Whenever any writ of mandamus shall be issued out of the supreme court of this state, the person, body or tribunal to whom the same shall be directed and delivered, shall make return to the first writ of mandamus, and for a neglect so to do, shall be proceeded against as for a contempt.

Pleadings and proceedings.

SEC. 2. Whenever a return shall be made to any such writ, the person prosecuting the same may demur or plead to all or any of the material facts contained in the said return, and the like proceedings shall be had thereon for the determination thereof, as might have been had if the person prosecuting such writ had brought his action on the case for a false return.

Trial of issues of fact.

SEC. 3. Issues of fact joined in any such proceeding, shall be tried in the county within which the material facts contained in the mandamus shall be alleged to have taken place.

Damages, &c.

SEC. 4. In case a verdict shall be found for the person suing such writ, or if judgment be given for him upon demurrer, or by default, he shall recover damages and costs, in like manner as he might have done in such action on the case as aforesaid; and a peremptory mandamus shall be granted to him without delay.

Recovery to bar another action.

SEC. 5. A recovery of damages by virtue of this chapter, against any party who shall have made a return to a writ of mandamus, shall be a bar to any other action against the same party for the making of such return.

Time for return.

SEC. 6. The supreme court, or any justice thereof, shall have the same power to enlarge the time for making a return, and pleading thereto, as in personal actions.

SEC. 7. Whenever a peremptory mandamus shall be directed to any public officer, body or board, commanding them to perform any public duty, specially enjoined upon them by any provisions of law, if it shall appear to the court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding two hundred and fifty dollars, upon every such officer or member of such body or board, which fine, when collected, shall be paid to the state treasurer.

Court may impose fine in certain cases.

SEC. 8. The payment of such fine shall be a bar to any action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

Payment of fine to bar action for penalty.

SEC. 9. Writs of prohibition shall only be issued out of the supreme court; and such writs shall be applied for upon affidavits, by motion, in the same manner as writs of mandamus; and if the cause shown shall appear to the court to be sufficient, a writ shall be thereupon issued, which shall command the court and party to whom it shall be directed, to desist and refrain from any further proceedings in the suit or matter specified therein, until the next term of the said supreme court, and the further order of such court thereon; and then to show cause why they should not be absolutely restrained from any further proceedings in such suit or matter.

Writs of prohibition.

SEC. 10. Such writ shall be served upon the court and party to whom it shall be directed, in the same manner as a writ of mandamus; and a return shall in like manner be made thereto by such court, which may be enforced by attachment.

Service and return.

SEC. 11. If the party to whom such writ of prohibition shall have been directed, shall, by an instrument in writing, to be signed by him and annexed to such return, adopt the same return, and rely upon the matters therein contained, as sufficient cause why such court should not be restrained as mentioned in the said writ, such party shall thenceforth be deemed the defendant in such matter, and the person prosecuting such writ may take issue or demur to the matters so relied upon by such defendant; and the like proceedings shall be had for the trial of issues of law or fact joined between the parties, and for the rendering of judgment thereupon, as in personal actions.

Proceedings when party adopts return.

SEC. 12. If the party to whom such writ of prohibition shall be directed, shall not adopt such return as above provided, the party prosecuting such writ shall bring on the argument of such return as upon a rule to show cause; and he may, by his own affidavit, and other proofs, controvert the matters set forth in such return.

Proceedings if return not adopted.

SEC. 13. The court, after hearing the proofs and allegations of the parties, shall render judgment, either that a prohibition absolute, restraining the said court and party from proceeding in such suit or matter, do issue, or a writ of consultation, authorizing the court and party to proceed in the suit or matter in question.

Judgment if return not adopted.

SEC. 14. If the party to whom such first writ of prohibition shall be directed, shall adopt the return of the court thereto as above provided, and judgment shall be rendered for the party prosecuting such writ, a prohibition absolute shall be issued; but if

Judgment if return adopted.

judgment be given against such party, a writ of consultation shall be issued as above provided.

CHAPTER 126.

OF INFORMATIONS IN THE NATURE OF A QUO WARRANTO, AND IN CERTAIN OTHER CASES.

Informations of course, in what cases.

SECTION 1. An information in the nature of a quo warranto may be filed in the supreme court, either in term time or vacation, by the attorney general, against individuals, upon his own relation, or upon the relation of any private party, and without applying to such court for leave, in either of the following cases:

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this state; or any office in any corporation created by the authority of this state:

2. Whenever any public officer, civil or military, shall have done or suffered any act, which by the provisions of law shall work a forfeiture of his office:

3. When any association, or number of persons shall act as a corporation within this state, without being legally incorporated.

Summons thereon.

SEC. 2. Whenever any such information shall be filed, a summons shall be issued thereon, which shall be served and returned in like manner as in personal actions; and whenever the same shall be returned served, the clerk shall enter the defendant's appearance.

What may be set forth in certain cases.

SEC. 3. Whenever any such information shall be filed against any person for usurping any office, the attorney general, in addition to the other matters required to be set forth in the information, may also set forth therein the name of the person rightfully entitled to such office, with an averment of his right thereto.

Judgment on information for usurping office.

SEC. 4. In every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party so entitled; or only upon the right of the defendant, as justice shall require.

Proceedings if judgment for relator.

SEC. 5. If judgment be rendered upon the right of the person so averred to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing any official bond which may be required by law, to take upon him the execution of the office; and it shall be his duty, immediately thereafter, to demand of the defendant in such information, all the books and papers in his custody, or within his power, belonging to such office.

Penalty on defendant for refusing to deliver books, &c.

SEC. 6. If such defendant shall refuse or neglect to deliver over any such books or papers, pursuant to such demand, he shall be deemed guilty of a misdemeanor; and the like proceedings shall be had, and with like effect, to compel the delivery of such books and papers as are prescribed by law.

Suggestion of damages.

SEC. 7. If judgment be rendered upon the right of the person so averred to be entitled, in favor of such person, he may, at any time within one year after the rendering of such judgment, make and file a suggestion, that he has sustained damages to a certain amount, by reason of the usurpation by the defendant, of the office from which such defendant has been evicted, and praying judgment therefor.

Proceedings on suggestion.

SEC. 8. Such suggestion shall be entered, with the proceedings thereon, upon the record of the judgment, or shall be attached thereto, as a continuation of the same; it shall be served on the defendant or his attorney, and a rule to plead thereto shall be entered, and notice thereof given, in the same manner, and with the like effect, as upon the filing of a declaration in personal actions.

Plea to suggestion, &c.

SEC. 9. The defendant may plead the general issue to such suggestion, which shall be, in substance, the same as in personal actions; and on trial of any such issue, the plaintiff therein shall be entitled to recover the damages which he may have sustained by reason of the usurpation.

Determination of issues.

SEC. 10. All issues of fact or of law, that shall be joined between the parties, shall be tried and determined in the supreme court, or in the circuit court of such county, as the supreme court may by special rule direct, and execution may issue on any judgment recovered on such trial as in other cases.

Assessment of damages on default, &c.

SEC. 11. If no issue of fact be joined upon such suggestion, or if judgment be rendered against the defendant by default, on demurrer, or otherwise, a writ of inquiry shall be issued to the sheriff of the county within which the duties of the office are to be exercised, if the same be local, and if not local, to the sheriff of any county within this state, to assess the damages sustained by the person filing such suggestion, by reason of the premises; or an order may be entered that such damages be assessed at a circuit court, to be held in any county of this state.

Informations against corporations.

SEC. 12. An information in the nature of a quo warranto, may also be filed by the attorney general, upon his own relation, or upon the relation of any private party, on leave granted, against any corporate body, whenever such corporation shall,

1. Offend against any of the provisions of the act or acts, creating, altering, or renewing such corporation: or,
2. Violate the provisions of any law, by which such corporation shall have forfeited its charter by misuser: or,
3. Whenever it shall have forfeited its privileges and franchises by non-user: or,
4. Whenever it shall have done or omitted any acts which amount to a surrender of its corporate rights, privileges and franchises: or,
5. Whenever it shall exercise any franchise or privilege not conferred upon it by law:

And it shall be the duty of the attorney general, whenever he shall have good reason to believe that the same can be established by proof, to file such information in every case of public interest; and also, in every other case in which satisfactory security shall be given to indemnify the people of this state against all costs and expenses to be incurred thereby.

CHAPTER 126.

Who to grant leave

SEC. 13. Leave to file such information may be granted by the supreme court in term time, or by any justice thereof, but by no other officer, upon the application of the attorney general in vacation; and such court or justice may, in their discretion, direct notice of such application to be given to such corporation, or its officers, previous to granting such leave, and may hear such corporation in opposition thereto.

Summons on information.

SEC. 14. Upon such leave being granted, and indorsed upon the information, under the hand of the clerk of the court, or of the justice granting the same, the attorney general may forthwith file the same, and thereupon may issue a writ of summons against such corporation, commanding the sheriff to summon such corporation to appear in the said court, and to answer the said information.

When summons not necessary.

SEC. 15. But when such corporation shall appear by counsel, pursuant to the notice above authorized to be given, and shall be heard in opposition to granting such leave, the court or justice granting leave may also direct a rule to be entered, requiring the defendants to appear and plead to such information, within twenty days after service of a copy thereof, and notice of said rule; and in such case it shall not be necessary to issue a writ of summons.

Proceedings on return of summons

SEC. 16. Whenever any writ of summons, issued upon an information in the nature of a quo warranto, shall be returned duly served, the attorney general may thereupon enter a rule, in vacation or in term time, requiring the defendants to plead to the information filed against them in twenty days after service of a copy thereof; and the same shall be served in the same manner, and with like effect, as rules upon declarations in personal actions.

Rule for appearance.

SEC. 17. Whenever any such writ shall be returned not served by reason of the defendants, or the officers of the defendants not being found within the county, the court shall direct a rule to be entered, requiring the defendant, whether an individual or a corporation, to appear and plead to such information, within twenty days after the last publication of such rule, as hereinafter provided.

Publication, &c.

SEC. 18. A certified copy of such rule shall be published for four weeks successively, in such paper as the court may direct; and if the defendant shall not appear and plead to such information, within the time limited in the rule, the plaintiff shall be entitled, upon filing an affidavit of the due publication of such rule, to enter the default of the defendant, in like manner as if the writ had been duly served.

Information against several persons.

SEC. 19. When several persons claim to be entitled to the same office or franchise, one information may be filed against all such persons, in order to try their respective rights to such office or franchise.

Enlarging time to plead, &c.

SEC. 20. An order may be made enlarging the time to plead or demur, upon an information in the nature of a quo warranto, by the supreme court, or by a justice thereof; but by no other person.

Judgment on conviction.

SEC. 21. Whenever any defendant, whether a natural person or a corporation, against whom an information in the nature of a quo warranto shall have been exhibited, shall be found or adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise, or privilege, judgment shall be rendered that such defendant be ousted, and altogether excluded from such office, franchise, or privilege; and also, that the attorney general, or the relator, if there be one, recover his costs against such defendant.

Court may impose a fine, &c.

Sec. 22. The court may also, in its discretion, impose a fine upon any such person or corporation against whom such judgment shall be rendered, not exceeding two thousand dollars; which fine, when collected, shall be paid to the state treasurer.

Judgments against corporations.

Sec. 23. Whenever it shall be found or adjudged that any corporation, against which an information in the nature of a quo warranto shall have been filed, has, by any mis-user, non-user, or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that such corporation be ousted and altogether excluded from such corporate rights, privileges and franchises, and that the said corporation be dissolved.

Collection of costs.

Sec. 24. If judgment be rendered upon any such information against any corporation, or against any persons claiming to be a corporation, the court may cause the costs therein to be collected, by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of any such corporation.

Powers of courts having equity jurisdiction.

Sec. 25. Whenever any such judgment shall be rendered, any court having equity jurisdiction shall have the same powers to restrain the corporation against which it is rendered; to appoint a receiver of its property and effects; and to take an account and make distribution thereof among its creditors, as in case of the voluntary dissolution of a corporation; and it shall be the duty of the attorney general, immediately after the rendering of any such judgment, to institute proceedings for that purpose in said court.

Record of judgment to be filed, &c.

Sec. 26. Whenever any such judgment shall be rendered against a corporation, a copy of the record of such judgment shall be forthwith filed in the office of the secretary of state, and such secretary shall forthwith cause notice of the substance and effect of such recovery to be published for four successive weeks in some newspaper printed at the seat of government, and in a newspaper printed in the county where the principal office or place of business of such corporation shall be, if a newspaper be there printed.

Information for forfeited property.

Sec. 27. Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the people of this state, or to any officers, for their use, an information for the recovery of such property, alleging the grounds of such forfeiture, may be filed by the attorney general in the circuit court; upon which the like proceedings and judgment shall be had, if the information be to recover personal property, as in actions of trover, and if to recover real property, as in actions of ejectment.

Writ of quo warrantto abolished, &c.

Proceedings on information and mandamus.

Sec. 28. Proceedings in quo warranto shall be by information, and the writ of quo warranto is hereby abolished. A rule to show cause why an information should not be filed, or why a mandamus should not issue, may be awarded by any judge of the circuit court in vacation upon good cause being shown; but no hearing shall be had upon any such rule, or upon the merits, except in term time, and the respondent to any information in the nature of quo warranto may plead or demur to such information, and if an issue of fact be made up by the pleadings, such issue shall be tried b jury.

TITLE XXVII.

CHAPTER 127.

OF THE LIMITATION OF ACTIONS.

What actions included under the provisions of this chapter.

SECTION 1. The actions included within the provisions of this chapter, are either,

1. Such as relate to real estate:
2. Those which may be brought for the recovery of any debt or demand, or for the recovery of damages only:
3. Those which may be brought for penalties or forfeitures:
4. Suits in courts of equity.

Limitation of Actions Relating to Real Estate.

Actions for the recovery of lands when to be brought.

SEC. 2. No action for the recovery of any lands, tenements or hereditaments, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question, within twenty years before the commencement of such action.

When avowry of title valid.

SEC. 3. No avowry or cognizance of title to real estate, or to any rents or services, shall be valid, unless it appear that the person making the avowry, or the person in whose right the cognizance is made, or the ancestor, predecessor or grantor of such person, was seized or possessed of the premises in question, within twenty years before the commission of the act, in defence of which such avowry or cognizance is made.

When entry not valid.

SEC. 4. No entry upon real estate shall be deemed sufficient or valid, as a claim, unless an action be commenced thereupon within one year after the making of such entry, and within twenty years from the time when the right to make such entry descended or accrued.

When establishing of title to be evidence of possession.

SEC. 5. In every action for the recovery of real estate, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law, and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title, for twenty years before the commencement of such action.

When premises shall be deemed to be held adversely under claim founded on written instrument or decree.

SEC. 6. Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of any premises under claim of title, exclusive of any other right, founding such claim upon some written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of some competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment, or of some part of such premises under such claim for twenty years, the premises so included shall be deemed to have been held adversely; except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed the possesion of any other lot of the same tract.

What shall be deemed an adverse possession in such cases.

SEC. 7. For the purpose of constituting an adverse possession by any person claiming a title, founded upon some written instrument or some judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved:
2. Where it has been protected by a substantial inclosure:
3. Where, although not inclosed, it has been used for the supply of fuel or of fencing timber, for the purposes of husbandry, or the ordinary use of the occupant:
4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved or cultivated.

Extent of adverse possession under a naked claim of title.

SEC. 8. Where it shall appear that there has been an actual, continued occupation of any premises, under a claim of title exclusive of any other right, but not founded upon any written instrument or any judgment or decree, the premises so actually occupied, and no other, shall be deemed to be held adversely.

What shall be deemed an adverse possession in such cases.

SEC. 9. For the purpose of constituting an adverse possession by a person claiming title not founded upon some written instrument, or some judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial inclosure:
2. Where it has been usually cultivated or improved.

Possession of tenant deemed possession of landlord.

SEC. 10. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord until the expiration of twenty years from the termination of the tenancy, or where there has been no written lease until the expiration of twenty years from the time of the last payment of rent, notwithstanding such tenant may have acquired another title, or may have claimed to hold adversely to his landlord; but such presumption shall not be made after the periods herein limited.

Right of possession when not impaired.

SEC. 11. The right of any person to the possession of any real estate, shall not be impaired or affected by a descent being cast in consequence of the death of any person in possession of such estate.

Provision in cases of disability to sue.

SEC. 12. If any person entitled to commence any action in this chapter specified, or to make any entry, avowry or cognizance, be at the time such title shall first descend or accrue, either,

1. Within the age of twenty-one years: or,
2. Insane: or,
3. Imprisoned on any criminal charge, or in execution upon some conviction of a criminal offence for any term less than for life: or,

4. A married woman.

The time during which such disability shall continue, shall not be deemed any portion of the time in this chapter limited for the commencement of such suit, or the making such entry, avowry or cognizance. But such person may bring such action or make such entry, avowry or cognizance after the said time so limited, and within ten years after such disability is removed, but not after that period.

In case of death during disability.

SEC. 13. If the person entitled to commence such action or make such entry, avowry or cognizance, shall die during the continuance of any disability specified in the preceding section, and no determination or judgment be had of the title, right or action to him accrued, his heirs may commence such action or make such entry, avowry or cognizance after the time in this chapter limited for that purpose, and within ten years after his death, but not after that period.

Limitation of Personal Actions.

Actions to be commenced within six years.

SEC. 14. The following actions shall be commenced within six years next after the cause of action shall accrue, and not afterwards:

1. All actions of debt founded upon any contract or liability, not under seal, except such as are brought upon the judgment or decree of some court of record of the United States, or of any state or territory of the United States:
2. All actions upon judgments rendered in any court not being a court of record:
3. All actions for arrears of rent:
4. All actions of assumpsit, or on the case, founded on any contract or liability, expressed or implied:
5. All actions for waste and for trespass on land:
6. All actions of replevin, and all other actions for taking, detaining or injuring goods or chattels:
7. All other actions on the case, except actions for slanderous words and for libels.

Actions to be commenced within two years.

SEC. 15. All actions for assault and battery and for false imprisonment, and all actions for slanderous words and for libels, shall be commenced within two years next after the cause of action shall accrue, and not afterwards.

Ib., within one year.

SEC. 16. All actions against sheriffs or other officers for the escape of persons imprisoned on civil process, shall be commenced within one year from the time of such escape, and not after.

Ib., within three years.

SEC. 17. All actions against sheriffs and coroners, upon any liability incurred by them, by the doing of any act in their official capacity, or by the omission of any official duty, except for escapes. shall be brought within three years after the cause of action shall have accrued, and not after that period.

Preceding provisions, when not to apply to promissory notes, &c.

SEC. 18. None of the foregoing provisions shall apply to any action brought upon a promissory note which is signed in the presence of an attesting witness, provided the action be brought by the original payee, or by his executor or administrator, nor to an action brought upon any bills, notes or other evidences of debt issued by any bank.

Actions to recover balance of account, &c.

SEC. 19. In all actions of debt or assumpsit brought to recover the balance due upon a mutual and open account current, the cause of action shall be deemed to have accrued at the time of the last item proved in such account.

When suit brought on personal actions not above limited

SEC. 20. All personal actions on any contract, not limited by the foregoing sections, or by any other law in this state, shall be brought within twenty years after the accruing of the cause of action.

Provisions of this chapter to apply to set-offs

SEC. 21. All the provisions of this chapter shall apply to the case of any debt on contract, alleged by way of set-off on the part of a defendant; and the time of limitation of such debt shall be computed in like manner as if an action had been commenced therefor, at the time when the plaintiff's action was commenced.

Limitation of Actions for Penalties and Forfeitures.

Actions for penalties, &c. to be commenced within two years

SEC. 22. All actions and suits for any penalty or forfeiture on any penal statute brought by the state, or any person to whom the penalty or forfeiture is given, in whole or in part, shall be commenced within two years next after the offence is committed, and not afterwards.

Qualification of last section

SEC. 23. The preceding section shall not apply to any suit which is or shall be limited by any statute to be brought within a shorter time than is prescribed therein, but such suit shall be brought within the time that may be limited by such statute.

Limitation of Actions in Courts of Equity.

When provisions of this chapter applicable in equity same as at law.

SEC. 24. Whenever there is a concurrent jurisdiction in the courts of common law, and in courts of equity of any cause of action, the provisions of this chapter, limiting a time for the commencement of a suit for such cause of action in a court of common law, shall apply to all suits hereafter to be brought for the same cause in the court of chancery.

Qualification of last section.

SEC. 25. The last section shall not extend to suits over the subject matter of which a court of equity has peculiar and exclusive jurisdiction, and which subject matter is not cognizable in the courts of common law.

When bills to be filed in six years.

SEC. 26. Bills for relief, on the ground of fraud, shall be filed within six years after the discovery, by the aggrieved party, of the facts constituting such fraud, and not after that time.

When in ten years.

SEC. 27. Bills for relief, in case of the existence of a trust, not cognizable by the courts of common law, and in all other cases, not herein provided for, shall be filed within ten years after the cause thereof shall accrue, and not after.

Death or disability of person entitled to file bill, &c.

SEC. 28. If the person, entitled to file any bill, specified in the two last sections, be, at the time of discovering the facts constituting such fraud, or at the time the cause for filing such bill shall accrue, under any of the disabilities enumerated in this chapter, the time during which such disabilities shall continue, shall be excepted from the limitations contained in the two last sections, in the same manner and with the like effect, as such time is herein excepted from the limitation prescribed for commencing actions at law; and in case of the death of the person so entitled, during such disability, or before the expiration of the time herein limited for filing such bills, the same may be filed by the heirs or representatives of such person, as the case may require, within the same time as allowed in this chapter, for commencing actions at law, in the like cases.

General Provisions.

Right of private action not merged in felony.

SEC. 29. The right of action of any person injured by any felony, shall not in any case be merged in such felony, or be in any manner affected thereby.

When persons may sue who are under disability at time action accrues.

SEC. 30. If any person entitled to bring any of the actions before mentioned in this chapter, shall at the time when the cause of action accrues be within the age of twenty-one years, or a married woman, insane, imprisoned or absent from the United States, such person may bring the said actions within the times in this chapter respectively limited after the disability shall be removed.

Aliens in case of war.

SEC. 31. When any person shall be disabled to prosecute an action in the courts of this state, by reason of his being an alien, subject or citizen of any country at war with the United states, the time of the continuance of such war shall not be deemed any part of the respective periods herein limited for the commencement of any of the actions before mentioned.

Limitation as to causes of action accruing without the state.

SEC. 32. It shall be lawful for any person against whom any action shall be commenced in any court of this state, where the cause of action accrued without the state, upon a contract or agreement express or implied more than six years before the commencement of the action, or upon any sealed or attested instrument in writing, or judgment or decree of any court, more than ten years before the commencement of the action, to plead the same, and give the same in bar of the plaintiff's right of action.

When plaintiff or defendant die.

SEC. 33. If any person entitled to bring any of the actions before mentioned in this chapter, or liable to any such action, shall die before the expiration of the time herein limited therefor, or within thirty days after the expiration of the said time, and if the cause of action does by law survive, the action may be commenced by or against the executor or administrator of the deceased person, as the case may be, at any time within two years after the grant of letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

Time in which new action may be commenced in case of failure, &c.

SEC. 34. If in any action duly commenced within the time in this chapter limited and allowed therefor, the process shall fail of a sufficient service or return by any unavoidable accident, or by any default or neglect of the officer to whom it is committed, or if the process shall be abated or the action otherwise avoided or defeated by the death of any party thereto, or for any matter of form, or if after a verdict for the plaintiff the judgment shall be arrested, or if the judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commence a new action for the same cause at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein ; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year.

When cause of action concealed.

SEC. 35. If any person who is liable, to any of the actions mentioned in this chapter, shall fraudulently conceal the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within six years after the person who is entitled to bring the same shall discover that he has such cause of action, and not afterwards.

Rights of joint contractors.

SEC. 36. If there are two or more joint contractors or joint executors, or administrators of any contractor, no such joint contractor, executor or administrator, shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any acknowledgment or promise made by any other or others of them.

Plaintiff to recover of part of joint contractors.

SEC. 37. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on the trial or otherwise, that the plaintiff is barred by the provisions of this chapter as to one or more of the defendants, but is entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff, as to any of the defendants against whom he is entitled to recover, and for the other defendant or defendants, against the plaintiff.

When defendant pleads that others should be joined.

SEC. 38. If in any action on contract the defendant shall plead in abatement that any other person ought to have been jointly sued, and issue be joined on that plea, and if it shall appear on the trial that the action was by reason of the provisions of this chapter, barred against the person so named in the plea, the said issue shall be found for the plaintiff.

Effect of payment and indorsement, &c.

SEC. 39. Nothing contained in the three preceding sections shall alter, take away or lessen the effect of a payment of any principal or interest made by any person ; but no indorsement or memorandum of any such payment written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment shall be made or purport to be made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of the provisions of this chapter.

Effect of payment by one joint contractor.

SEC. 40. If there are two or more joint contractors, or joint executors or administrators of any contractor, no one of them shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any payment made by any other or others of them.

Judgments in courts of record, when presumed paid

SEC. 41. Every judgment and decree in any court of record of the United States, or of any State or territory of the United States, shall be presumed to be paid and satisfied at the expiration of twenty years after the judgment or decree was rendered.

TITLE XXVIII.

OF THE RELIEF OF INSOLVENT DEBTORS AND PERSONS CONFINED IN JAIL ON CIVIL PROCESS.

CHAPTER 128. Of the relief of insolvent debtors.
129. Of the relief of persons confined in jail on civil process.

CHAPTER 128.

OF THE RELIEF OF INSOLVENT DEBTORS.

How insolvent debtors may be discharged from their debts.

SECTION 1. Every insolvent debtor may be discharged from his debts, as hereinafter provided, upon executing an assignment of all his property, real and personal, for the benefit of his creditors, and upon compliance with the several provisions of this chapter.

To present petition and schedule to judge.

SEC. 2. Such insolvent debtor shall petition a judge of the supreme or circuit court, praying to be discharged, in pursuance of the provisions of this chapter, and shall annex to, and deliver with his petition to the officer, to whom it shall be presented, a schedule containing,

1. A full and true account of all his creditors:
2. The place of residence of each creditor, if known to such insolvent, and if not known, the fact to be so stated:
3. The sum owing to each creditor, and the nature of each demand, whether arising on written security, on account, or otherwise:
4. The true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued:
5. A statement of any existing judgment, mortgage, or collateral or other security, for the payment of any such debt:
6. A full and true inventory of all the estate, both real and personal, in law and in equity, of all choses in action, debts due, and monies on hand of such insolvent, of the incumbrances existing thereon, and of all the books, vouchers, and securities relating thereto.

Affidavit to be annexed to petition.

SEC. 3. An affidavit, in the following form, shall be annexed to the said petition, account and inventory, and shall be sworn to and subscribed by such insolvent, in the presence of the officer to whom the said petition is addressed, who shall certify the same:

"I ———————, do swear, (or affirm as the case may be,) that the account of my creditors, and the inventory of my estate, which are annexed to my petition, and herewith delivered, are, in all respects, just and true, and that I have not, at any time, or in any manner whatsoever, disposed of or made over any part of my estate for the future benefit of myself, or my family, or in order to defraud any of my creditors, and that I have, in no instance, created or acknowledged a debt for a greater sum than I honestly or truly owed, and that I have not paid, secured to be paid, or in any way compounded with any of my creditors, with a view fraudulently to obtain the prayer of my petition."

Order for creditors to show cause, &c.

SEC. 4. The officer receiving such petition, schedule and affidavit, shall make an order, requiring all the creditors of such insolvent to show cause, if any they have, at a certain time and place to be specified by him, why an assignment of the insolvent's estate should not be made, and he be discharged from his debts.

Notice, how and where to be published.

SEC. 5. The officer granting such order, shall direct notice of its contents to be published in a newspaper printed at the seat of government of the state, and in a newspaper printed in the county in which such application is made, if there be one, and if one-fourth part in amount of the debts owing by such insolvent shall have accrued in any other state or territory, or be due to creditors residing there, such officer shall also designate a newspaper at the seat of government of such state or territory, in which such notice shall be published.

Ib.

SEC. 6. If all the creditors of such insolvent reside within the state, the said officer shall direct such notice to be published once in each week, for six successive weeks, and if any of such creditors reside out of the state, the notice shall be directed to be published once in each week, for ten successive weeks.

When cause to be heard; proof of publication of notice.

SEC. 7. On the day, or at the term appointed in such order, or any subsequent day or term, that the officer or court before whom cause is required to be shown, may appoint, the said officer or court, as the case may be, shall proceed to hear the proofs and allegations of the parties, and before any other proceeding be had, shall require proof of the publication of the notice as herein directed.

Creditor may demand that cause be tried by a jury.

SEC. 8. Every creditor opposing the discharge of an insolvent, under this chapter, may at the time appointed for the firt hearing, demand of the officer or court, before whom such hearing shall be had, that the cause of such insolvent be heard and determined by a jury, and shall be entitled to an order to that effect, upon filing with such officer or court a specification, in writing, of the grounds of his objection to such discharge.

How jury to be drawn and sworn.

SEC. 9. Upon such demand being made to any court, before which a hearing shall be had, a jury shall be drawn in the same manner, as for the trial of civil cases, from the jurors summoned and attending said court, who shall be sworn as prescribed in this chapter.

How jury procured before a single officer.

SEC. 10. If such demand be made to any single officer, he shall nominate eighteen reputable freeholders of the county, and shall issue a summons to the sheriff or any constable of the county, commanding him to cause the persons so nominated to appear before such officer at a time and place to be specified in the summons, not less than six nor more that twelve days from the time of issuing the same.

How jury drawn and sworn.

SEC. 11. At the time and place so appointed, twelve of the persons so summoned and appearing, shall be balloted for and drawn in like manner as jurors in a court of record, and shall be sworn by such officer well and truly to hear, try and determine the validity of the objections so specified.

Jury to determine the matter and how to be kept; effect of verdict.

SEC. 12. Such jury so drawn and sworn, either by a court or any officer, having heard the proofs and allegations of the parties, shall determine the matter submitted to them, and for that purpose, shall be kept together by some proper officer, to be sworn, as is usual in like cases in courts of record, untill they agree upon their verdict, and such verdict shall be conclusive in the premises, unless reversed on writ of error as hereinafter directed.

Verdict to be recorded.

SEC. 13. The verdict so rendered shall be recorded by the court or officer in the minutes of the proceedings.

To be but one jury in a case; if can not agree court to decide.

SEC. 14. There shall be but one hearing before a jury, in any case under this chapter. If such jury cannot agree, after being kept together a reasonable time, then they shall be discharged, and the court or officer shall decide upon the merits of the application, as if no jury had been called.

Insolvent may be examined on oath before jury.

SEC. 15. At the hearing of any such petition, before a jury or otherwise, the insolvent may be examined on oath, at the instance of any creditor, touching his estate or debts, or any matter stated in his schedule, and may be required to state any change, which may have occurred in the situation of his property, since the making of his schedule, and particularly whether he has collected any debts or demands, or made any transfer of any part of his real or personal estate; but this shall not be construed to prohibit any such creditor from contradicting or impeaching, by other competent testimony, any evidence given by such insolvent.

When certain payments to be made by insolvent before discharge granted.

SEC. 16. If it shall appear, on such examination or otherwise, by competent proof, that such insolvent has collected any debts or demands, or made any transfer, absolute or conditional, or otherwise, of any part of his real or personal property, since the making of the schedule annexed to his petition, he shall be required to pay, forthwith, to the officer or to the clerk of the court, before whom the hearing shall be had, the full amount of all debts and demands so by him collected or received, and the full value of all property so by him transferred, except such part of the said debts and property, as shall satisfactorily appear to the officer or court to have been necessarily expended by such insolvent, for the support of himself or his family, and no discharge shall be granted to him under the provisions of this chapter, unless such payment shall be made, within thirty days thereafter to the assignees of such insolvent.

When assignment of insolvent's estate to be ordered.

SEC. 17. If it shall satisfactorily appear to the officer or the court, before whom such application is pending, in cases where no jury has been required, or the jury have disagreed, that the insolvent is justly and truly indebted to the creditors in the sums mentioned in his schedule and affidavit, that such insolvent has honestly and fairly given a true account of his estate, and has, in all things, conformed to the matters required of him in this chapter, the officer or court before whom the application shall be pending shall direct an assignment of all such insolvent's estate, both in law and equity, in possession, reversion, or remainder, except such property as may be by law exempt from execution.

Effect of finding of jury.

SEC. 18. When any of the matters in the last section required to be established, previous to granting an order of assignment, shall have been submitted to a jury, as herein provided, and shall have been found in favor of the insolvent, such finding shall be conclusive, as to such matters, upon the officer or court before whom the proceedings are pending, and the officer or court shall direct an assignment accordingly: Provided, that the jury may increase or diminish the amount of any debt by such insolvent set forth in his schedule.

Assignment, what to vest in assignees.

When contingent interest to vest in assignees.

SEC. 19. Such assignment shall vest in the assignees all the interest of such insolvent, at the time of executing the same, in any estate, or property, real or personal, whether such interest be legal or equitable; but no contingent interest shall pass to the assignees by virtue of such assignment, unless the same shall become vested, within three years after the making of the assignment, and in case of its becoming so vested, it shall pass to the assignees, in the same manner as it would have vested in such insolvent, if no assignment had been made by him.

When officer or court shall grant discharge; effect of same.

SEC. 20. Upon such insolvent's producing a certificate, under the hands and seals of the assignees, executed in the presence of such officer, or of two witnesses, and proved by the affidavit of one of them, stating that such insolvent has assigned and delivered, for the use of all his creditors, all his estate so directed to be assigned, and all the books, vouchers and securities relating to the same, and upon his also producing a certificate of the register of deeds of the proper county, that such assignment has been duly recorded in his office, the officer, or court, who directed such assignment, shall grant to such insolvent a discharge from his debts, which shall have the effect declared in the succeeding sections of this chapter.

Where papers in the case to be filed; clerk of court to enter judgment in favor of creditors.

SEC. 21. The petition, affidavit, order of discharge, and all the testimony, proceedings and papers in the case of such insolvent, shall be filed in the office of the clerk of the circuit court, whose duty it shall be to enter upon the docket of judgments in such court the names of the several creditors mentioned in the schedule of such insolvent, as plaintiffs, and the name of such insolvent, as defendant, and to enter a judgment in said docket, by confession of defendant, for the several sums respectively appearing, or shown to be due, in and by such schedule and proceedings.

Clerk to enter discharge of judgment and effect of same.

SEC. 22. The said clerk shall also enter a discharge of such judgment upon the docket by order of the court, and such discharge may be pleaded in all cases hereinafter mentioned.

Discharge may be pleaded, &c.; what actions to be barred thereby.

SEC. 23. In any action which shall be brought against such insolvent, or his personal representatives, a discharge granted pursuant to the provisions of this chapter may be pleaded or given in evidence under the general issue, and notice thereof, in bar of any action upon any contract made by such insolvent, and in bar of any action upon any liability of such insolvent, incurred by making or indorsing any promissory note or bill of exchange previous to the execution of his assignment, or incurred by him in consequence of the payment, by any party to such note or bill, of the whole or any part of the money secured thereby, whether such payment be made prior or subsequent to the execution of the assignment by such insolvent, provided the same or the consideration be included in such schedule.

In what cases discharge shall be voidable.

SEC. 24. Every discharge granted to an insolvent under this chapter shall be voidable in each of the following cases:

1. If such insolvent shall have wilfully sworn falsely in his affidavit annexed to his petition, or upon his examination, in relation to any material fact concerning his estate or his debts, or to any other material fact:

2. If, after the presentation of his petition, he shall sell, or in any way transfer, or assign, any of his property, or collect any debts due him, and shall not give a just and true account thereof, on the hearing of his application, and shall not also pay, or secure the payment of the money so collected, or the value of the property so assigned, as herein before directed:

3. If he shall secrete any part of his estate, or any books or writings relative thereto, with intent to defraud his creditors:

4. If he shall fraudulently conceal the names of any of his creditors, or the amount of any sum due to any of them:

5. If he shall pay, or consent to the payment of any portion of the debt or demand of any of his creditors, or shall grant, or consent to the granting of any gift or reward to any such creditor, upon any express or implied contract or trust, that the creditor so paid or rewarded should abstain or desist from opposing the discharge of such insolvent:

6. If he shall be guilty of any fraud whatever, contrary to the true intent of this chapter.

Writs of error to supreme court; when new trial shall be awarded.

SEC. 25. Writs of error from the supreme court may be sued out, within one year next after the rendition of the several judgments against such insolvent in the circuit court; and if upon the hearing of such cause in the supreme court, it shall appear by affidavit that any clause in the last preceding section has been violated, then, and in such case, a new trial or hearing shall be awarded to the circuit court in which such judgments may have been rendered.

New hearing, how conducted; judgment thereon to be conclusive.

SEC. 26. The new hearing to be had in pursuance of the last preceding section shall be, in all respects, conducted according to the provisions of this chapter, and the judgment, rendered on such new hearing, shall be final and conclusive in the premises.

Lien of judgment.

SEC. 27. No judgment, rendered in pursuance of the provisions of this chapter, shall be, or become a lien upon any other property than such as may have been assigned in satisfaction thereof.

Court may make orders for distribution of proceeds of property, &c.

SEC. 28. The court, in which judgment may have been rendered, in pursuance of the provisions of this chapter, may, from time to time, make such orders for the distribution of the proceeds of the sale of the property assigned by any insolvent, as to said court may appear most for the interest of the creditors, and for the payment from the proceeds of sales of such property, of all legal fees and expenses accruing on the application for discharge by any such insolvent.

CHAPTER 129.

OF THE RELIEF OF PERSONS CONFINED IN JAIL ON CIVIL PROCESS.

When persons confined in jail for tort to be discharged.

SECTION 1. Every person confined in jail on an execution issued on a judgment recovered in an action of tort, shall be discharged therefrom at the end of ten days from his first confinement, upon the conditions hereinafter specified.

Notice of application to be given.

SEC. 2. Such person shall cause notice to be given to the plaintiff in the suit, his agent or attorney, in writing, that on a certain day and hour, and at a certain place, he will apply to two justices of the peace of the county where the person is committed, stating the names of such justices, for the purpose of obtaining a discharge from his imprisonment.

Notice, how and when served.

SEC. 3. Such notice shall be served by a copy on the plaintiff, his agent or attorney, twenty-four hours before the hour for hearing the application, in cases where the plaintiff, his agent or attorney lives within twenty miles of the place of the hearing; and twenty-four hours shall be added to the time of the notice, for every twenty additional miles the plaintiff, his agent or attorney, shall reside distant from such place.

Prisoner to be examined on oath.

SEC. 4. At the time and place specified in such notice, such person shall be taken under the custody of the jailer, or the sheriff, or his deputy, before such justices, who shall examine the prisoner on his oath, concerning his estate and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and they shall also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

Plaintiff may propose interrogatories, &c.

SEC. 5. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories, pertinent to the inquiry, and they shall, if required by the creditor, be proposed and answered in writing, and the answers shall be signed and sworn to by the prisoner; and the plaintiff in the action may have a copy of the interrogations and answers, certified by the justices, upon paying therefor the legal fees.

Oath to be administered to prisoner.

SEC. 6. If upon such examination, the justices shall be satisfied that the prisoner is entitled to his discharge, they shall administer to him the following oath, to wit:

Form of oath.

"I, ———, do solemnly swear, that I have not any estate, real or personal, to the amount of twenty dollars, except such as is by law exempted from being taken in execution, and that I have not any other estate, now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors. So help me God."

Justices to make certificate.

SEC. 7. After administering the oath the justices shall make a certificate under their hands as follows:

"To the sheriff or jailer of the county of ———.

The undersigned, two justices of the peace for said county, certify that ——— ———, confined in your jail upon an execution at the suit of ———, is entitled to be discharged from imprisonment, if he be imprisoned for no other cause."

SEC. 8. The jailer upon receiving such certificate, shall forthwith discharge the prisoner, if he be imprisoned for no other cause.

When jailer to discharge prisoner.

SEC. 9. If such justices should not discharge the prisoner, he shall be entitled to apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceedings shall thereupon be had.

If not discharged may apply every ten days.

SEC. 10. The prisoner after being so discharged, shall be forever exempted from arrest or imprisonment for the same debt, unless he shall be convicted for having wilfully sworn falsely upon his examination before the two justices, or in taking the oath before prescribed.

Effect of discharge.

SEC. 11. The judgment against any prisoner, who is discharged as aforesaid, shall remain in full force against any estate, which may then, or at any time afterwards, belong to him; and the plaintiff in the action may take out a new execution against the goods and estate of the prisoner, in like manner as if he had never been committed on the execution.

Judgment to remain in full force against property of prisoner, &c.

SEC. 12 If the debtor shall undertake to satisfy the execution, he shall not be entitled to his discharge until he has paid all the charges for his support in prison, in addition to the sum due on the execution, and the costs and charges thereon.

When debtor not to be discharged until, &c.

SEC. 13. The plaintiff in the action may at any time order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action.

Plaintiff may order prisoner discharged.

SEC. 14. Whenever a person is committed to jail on execution issued on a judgment recovered in a civil suit, the creditor, his agent or attorney, shall advance to the jailer within twenty-four hours after such commitment, sufficient money to pay for the support of said prisoner during the time for which he may be imprisoned; and in case the money should not be so advanced, or if during the time the prisoner may be in confinement the money should be expended in the support of such prisoner, the jailer shall forthwith discharge such prisoner from custody, and such discharge shall have the same effect as a discharge by order of the creditor.

Creditor to advance money for support of prisoner, &c.

TITLE XXIX.

OF COSTS AND FEES.

CHAPTER 130. Of costs, and the recovery and taxation thereof in civil cases.
131. Of the fees of certain officers and other persons, and general provisions relative to fees.

CHAPTER 130.

OF COSTS, AND THE RECOVERY AND TAXATION THEREOF IN CIVIL CASES.

If plaintiff's bill in chancery be dismissed, when defendant shall recover costs.

SECTION 1. If the plaintiff in chancery shall dismiss his bill or petition, or if the same shall be dismissed for want of prosecution, the defendant shall recover his costs, except in those cases where, according to the practice of the court, costs would not be awarded against such complainant or petitioner, upon a decree rendered on hearing the cause.

How paid in other cases in chancery.

SEC. 2. In all other cases where no special provision shall be made by law, the costs of all suits and proceedings in chancery, shall be paid by such party as the court shall direct.

In what cases plaintiff shall recover costs in proceedings at law.

SEC. 3. In the following cases, if the plaintiff recover judgment by default, upon confession, verdict, demurrer or otherwise, in any action or proceeding at law, he shall recover his costs:

1. In all actions of ejectment, or for waste, or for private nuisance; and in all proceedings to recover the possession of land forcibly entered, or forcibly or otherwise unlawfully detained:

2. In all actions in which the title to lands or tenements, or a right of way, or a right by prescription or otherwise, to any easement in any land, or to overflow the same, or to do any other injury thereto, shall have been put in issue by the pleadings, or shall have come in question on the trial of the cause:

3. In suits and proceedings upon writs of scire facias, audita querela, prohibition, or information in the nature of a quo warranto:

4. In all actions for the recovery of any debt or damages, or for the recovery of penalties or forfeitures, in cases where such actions are not cognizable before a justice of the peace, and in all actions of replevin:

5. In all actions where the plaintiff shall recover any sum, if it appear that his claim, as established at the trial, exceeded two hundred dollars, and the same was reduced by set-off:

6. In actions for trespass upon land, or for taking personal property, where the court before whom the same shall be tried, shall certify in their minutes, or the jury by whom the damages shall be assessed, shall find and return in their inquisition, that such trespass was wilful and malicious:

7. In actions for a false return, or for any other malfeasance or misfeasance, by any ministerial or judicial officer, in such capacity or office, except such actions against constables or other ministerial officers, touching their duties upon process issued in civil actions brought in a justices' court.

When no more costs than damages.

Sec. 4. If the plaintiff in an action for assault and battery, or false imprisonment, or for slanderous words, or for libel, recover less than fifty dollars, such plaintiff shall recover no more costs than damages.

When defendant to have costs.

Sec. 5. In all actions and proceedings in which the plaintiff would be entitled to costs upon a judgment rendered in his favor, if, after the appearance of the defendant, such plaintiff be non-suited, discontinue his suit, be non-prossed, or judgment pass against him on verdict, demurrer, or otherwise; or in case a plaintiff recover judgment, but not enough to entitle him to costs, the defendant shall have judgment to recover against such plaintiff, his full costs, which shall have the like effect as all other judgments.

When last section not to extend to executors, &c.

Sec. 6. But the last section shall not extend to giving a defendant costs against executors or administrators, necessarily prosecuting in the right of their testator or intestate, unless upon special application the court shall award costs against them for wantonly bringing any suit, for unnecessarily suffering a non-suit or non-pros, or for bad faith in bringing or conducting the cause.

One of several defendants acquitted, &c., entitled to costs.

Sec. 7. When several persons are made defendants in any suit or proceeding, or in any action in which the plaintiff, upon a recovery would be entitled to costs, and one or more of them shall be acquitted by verdict on the trial, or by judgment upon plea in abatement, or on demurrer, or by the plaintiff's discontinuing, as to such defendant, every person so acquitted shall recover his costs of suit, in like manner as if judgment had been rendered in favor of all the defendants.

But not, if court certify in certain cases, &c.

Sec. 8. But if such person be so acquitted in any action brought for the recovery of land, or the possession thereof, or for nuisance, waste, trespass, or trespass on the case for any non-feasance or mis-feasance and if the judge or court before whom such trial shall be had, or such judgment shall be given, shall certify in the minutes of the court that there was reasonable cause for making the person so acquitted, a defendant in such action, then such person shall not be entitled to recover such costs; and no costs shall be recovered against him.

When several suits brought on one bond, note, &c., how costs collected.

Sec. 9. When several suits shall have been brought on one bond, recognizance, promissory note, bill of exchange or other instrument, and where several suits shall be brought against the makers and indorsers of a note, or against the drawers, acceptors or indorsers of a bill of exchange, there shall be collected or received from the defendant, the costs taxed in one suit only, at the election of the plaintiff; and in the other suits, the actual disbursements only of the plaintiff, shall be collected or received from the defendant.

Costs when one of several defendants acquitted in action on contract.

Sec. 10. If in any action founded upon a contract, the plaintiff fail to recover against one of several defendants on the trial, or if judgment on a plea in abatement, or on demurrer, be rendered in favor of one of several defendants; or if, by the plaintiff's discontinuing as to such defendant, he be acquitted; such defendant shall not be entitled to recover costs, unless a certificate be given by the judge or court before whom the trial shall be had, or the judgment shall be given, and be entered in its minutes, that such defendant was unreasonably and unnecessarily made a party to such action.

Single costs on recovery of double damages, &c.

SEC. 11. Whenever, by the provisions of any statute, a plaintiff shall be entitled to recover double or treble the damages assessed by a jury, if such damages so doubled or trebled, as the case may be, entitled him to recover costs, he shall recover single costs only in such suit, except in cases otherwise specially provided for by law.

When defendant to recover costs, and one half more taxed.

SEC. 12. In the following actions, if judgment be rendered for the defendant upon verdict, demurrer, non-suit, non-pros, discontinuance of the plaintiff or otherwise, in any action, certiorari, writ of error, or other proceeding, such defendant shall recover the amount of his taxed costs, and one-half thereof in addition:

1. In actions against public officers appointed under the authority of this state, or elected by the people; or against any person specially appointed according to law, to execute the duties of such public officer; for or concerning any act done by such officer or person, by virtue of his office, or for or concerning the omission, by such officer or person, to do any act, which it was his official duty to perform:

2. In actions against any other person, for doing any act by the commandment of such officers or persons, or in their aid or assistance, touching the duties of such office or appointment:

3. In actions against any person, for making any sale, or doing any other act by authority of any statute of this state.

To whom double costs, &c. belong.

SEC. 13. When double or treble costs shall be awarded to any defendant, the same shall be deemed to belong to such defendant, and the officers who may have rendered any services in such action to such defendant, and the witnesses and jurors in such action, shall be entitled to receive and retain, only the single costs allowed by law for their services respectively.

Costs when several issues, &c.

SEC. 14. When there shall be several issues in any case, and a verdict shall be rendered for the plaintiff in one or more of them, and for the defendant on another, if the plaintiff obtain judgment upon the whole record, costs shall be awarded as follows:

1. When the substantial cause of action was the same in each issue, the plaintiff shall recover costs on those issues which were found for him, and shall not be liable to the defendant for the costs of the issue which shall have been found for the defendant:

2. When there are two or more distinct causes of action in separate counts, the plaintiff shall recover costs on those issues which are found for him, and the defendant on those which are found in his favor.

When costs for issues found for plaintiff not allowed.

SEC. 15. If judgment be recovered for the defendant on the whole record, the costs of the issues which may be found for the plaintiff, shall not be allowed to either party.

Costs on general demurrer.

SEC. 16. When judgment shall be rendered in favor of a defendant, upon general demurrer to one or more counts in a declaration, and the plaintiff shall have judgment on other counts, on demurrer, on verdict or by default, the defendant shall be allowed his costs upon such judgment in his favor.

On plea of misnomer.

SEC. 17. When judgment shall be rendered for a defendant on a plea of misnomer in abatement, no costs shall be allowed to either party.

On reversal of judgment.

SEC. 18. If, upon a writ of error, the judgment be reversed, the plaintiff in error shall recover costs, unless in such judgment a new trial be ordered, in which case the costs on such reversal shall be in the discretion of the court; and if a judgment be reversed in part, and affirmed in part, costs shall be awarded to either party in the discretion of the court.

Costs and damages on affirmance, &c.

SEC. 19. If, upon such writ, the judgment be affirmed, or the writ be discontinued or quashed, or the plaintiff in error be nonsuited, the defendant in error shall recover costs; and also damages for the delay and vexation, to be assessed by the court in accordance with law.

Double costs on affirmances.

SEC. 20. If the judgment so affirmed was rendered after verdict, the defendant in error may recover twice the amount of his taxed bill of costs, in the discretion of the court.

Costs on neglecting to prosecute writ of error or appeal.

SEC. 21. The court to which any writ of error may be returnable, or to which any appeal may be made, may award costs against the party neglecting to file such writ, or the transcript of the record intended to be removed thereby, or neglecting to file such appeal, and the pleadings and proceedings appealed from, according to law, and the rules of the court; and may also award costs against either party for any discontinuance or default.

Costs and damages on appeals from circuit and probate courts.

SEC. 22. Upon appeals from probate courts to a circuit court, and from the circuit courts to the supreme court, costs shall be paid by the appellant or respondent, as shall be directed by the court to which the appeal is made; and upon affirming any sentence, determination or decree, or upon the appeal being discontinued or quashed, the court may, in its discretion award damages for the delay and vexation caused by such appeal.

Costs on countermanding notice of trial.

SEC. 23. Whenever a cause shall be noticed for trial by the plaintiff, and such notice be countermanded, the defendant shall be entitled to all the costs actually and in good faith incurred by him, previous to the service of such countermand.

Liability of the people for costs.

SEC. 24. In all civil suits and proceedings by or in the name of the state, instituted by any officer duly authorized for that purpose, and not brought on the relation, or for the use of any citizen, or upon any penal statute, the state shall be liable for costs in the same cases, and to the same extent, as if such suit or proceeding was instituted by an individual.

Relators liable for costs.

SEC. 25. When a suit or proceeding shall be instituted in the name of the state, on the relation of any citizen, such relator shall be entitled to and liable for costs, in the same cases, and to the same extent, as if such suit or proceeding had been instituted in his own name.

Costs on writs of mandamus.

SEC. 26. In suits and proceedings upon writs of mandamus, the supreme court may, in its discretion, award or refuse costs to any party therein; and upon refusing an alternative or peremptory mandamus, the court may award costs to be paid by the party applying for such mandamus.

Costs on attachment.

Sec. 27. In proceedings by attachment, to enforce or protect the civil rights or remedies of parties, or for the non-payment of any sum of money, costs shall be awarded to be paid by the offending party.

In suits brought in name of another.

Sec. 28. When any action shall be brought in the name of another, by an assignee of any right of action, or by any person beneficially interested in the recovery in such action, such assignee or person shall be liable for costs in the same cases, and to the same extent, in which a plaintiff would be liable, and the payment of such costs may be enforced by attachment in all cases where judgment is not by law required to be rendered therefor against such assignee or person interested.

If plaintiff appeal from justice's court, when not to recover costs.

Sec. 29. In all civil actions tried before a justice of the peace, if the plaintiff shall appeal from a judgment in his favor, and shall not recover in a county court a greater sum for debt or damages than he recovered by the first judgment, he shall not be entitled to costs.

Interest accrued after judgment not to affect question of costs.

Sec. 30. In comparing the sums recovered by the two judgments for the purposes specified in the preceding section, the sum, if any, allowed for interest accrued on the plaintiff's demand, after the first verdict or judgment, shall not be included, and he shall not be considered as having recovered more on the appeal than on the first trial, merely on account of the addition of interest accrued between the two trials.

Costs where money brought into court

Sec. 31. When a defendant shall bring money into court, and offer the same in satisfaction of the damages demanded by the plaintiff, the plaintiff shall in all cases be entitled to the costs which had previously accrued, though he may not recover a larger sum of damages than is so brought into court.

*See page 501.

*Of Filing Security for Costs.**

When security may be required.

Sec. 32. When a suit shall be commenced in any court,

1. For or in the name of the trustees of any debtor: or,
2. For or in the name of any person being insolvent, who shall have been discharged from his debts pursuant to law, brought for the collection of any debt contracted before the assignment of his estate: or,
3. For or in the name of any person committed in execution for a crime: or,
4. In the name of any infant whose next friend has not given security for costs: or,
5. For a plaintiff not residing within the jurisdiction of such court, or for several plaintiffs who are all non-residents:

The defendant may require such plaintiff to file security for the payment of the costs that may be incurred by the defendant in such suit.

Ib., after suit brought.

Sec. 33. If after the commencement of a suit, all the plaintiffs shall become insolvent, or non-residents, and he discharged as aforesaid, or be sentenced to imprisonment in the state prison for any term less than life, the defendant may also require such security to be filed.

Order for security, &c.

Sec. 34. The order shall be to file such security, and that all proceedings on the part of the plaintiff be stayed, until such security be filed and the sureties shall justify if excepted to, may be made by the court in which the action is pending, or by any judge thereof in vacation, upon due proof, by affidavit, of the facts entitling the defendant thereto.

How security given.

SEC. 35. Such security shall be given in the form of a bond, in a penalty of at least one hundred dollars, with one or more sufficient sureties, to the defendant, conditioned to pay, on demand, all costs that may be awarded to the defendant in such suit.

Bond to be filed and notice given.

SEC. 36. Such bond shall be filed with the clerk of the court in which the action is pending, and notice thereof be given to the defendant or his attorney.

Exception to sureties.

SEC. 37. Within twenty days after the service of such notice, the defendant may except to the sufficiency of the sureties, by giving notice of such exception to the plaintiff's attorney.

Justifying by sureties, &c.

SEC. 38. Within twenty days after such notice of exception, the sureties shall justify, by affidavit, that they are worth double the penalty of such bond, over and above all debts; of which affidavit a copy shall be served on the defendant or his attorney, and such justification shall operate to discharge the order to stay proceedings.

When attorney for plaintiff liable for costs.

SEC. 39. In the cases in which, according to the provisions of this chapter, a defendant at the commencement of a suit shall be entitled to require security for costs, the attorney for the plaintiff shall be liable for such costs to an amount not exceeding one hundred dollars, until security therefor be filed as herein provided, whether such security shall have been required by the defendant or not.

How may relieve himself.

SEC. 40. Such attorney may relieve himself from such liability, by filing security as herein provided, without being required to do so by the defendant, and by giving notice thereof to such defendant or his attorney.

Taxation of Costs.

By whom costs taxed in supreme court.

SEC. 41. Costs in the supreme court shall be taxed by one of the judges or a clerk thereof, and by such other officers as the supreme court shall, by general or special order, designate for that purpose; and upon such notice to the opposite party, as shall be prescribed by the general rules of the court.

By whom taxed in courts of record.

SEC. 42. Costs in the several courts of record may be taxed by any officer authorized to tax costs in the supreme court, or by the clerks of the said courts respectively, and upon the like notice as shall be required in the supreme court.

When fees to be taxed.

SEC. 43. Upon the settlement of an execution by a defendant, or upon settling any suit or demand, the sheriff or attorney claiming any fees which shall not have been taxed, shall, upon being required by the defendant, and on his paying the expenses thereof, have his fees taxed by some proper officer authorised to tax costs in the court in which the suit may be pending; or from which the execution shall have been issued.

Not to be collected until taxed.

SEC. 44. No sheriff, attorney or other person shall collect any fees, after having been required as aforesaid, to have the same taxed, without such taxation having been made.

CHAPTER 131. Taxing costs of foreclosures of mortgage. SEC. 45. The costs and expenses of foreclosing any mortgage by advertisement, shall be taxed by some officer authorised to tax costs in a court of record, upon the requisition of any party liable to pay the same, and upon such party paying the expense thereof.

Duties of taxing officers. SEC. 46. Every officer authorized to tax costs in any court for services rendered in any proceeding authorized by law, shall examine the bills presented to him for taxation, whether such taxation be opposed or not, and shall be satisfied that the items charged in such bill are correct and legal; and shall strike out all charges for services, which, in his judgment, were not necessary to be performed.

Certain charges to be proved. SEC. 47. When there shall be charges in a bill of costs for the attendance of any witness, or for copies or exemplifications of documents or papers, or for any other disbursements, except to officers for services rendered, such charges for witnesses shall not be taxed without an affidavit stating the distance they respectively travelled, and the days they actually attended; and such charges for copies shall not be taxed without an affidavit that such copies were actually and necessarily used, or necessarily obtained for use; nor shall such disbursements be allowed without an affidavit specifying the items thereof particularly, nor unless they appear to have been necessary and reasonable in amount.

Evidence of right to costs in certain cases. SEC. 48. If, upon the trial of any cause, the plaintiff's claim shall be reduced by set-off, or any other fact shall appear which will entitle either party to costs, or to double costs, the judge holding the court shall, on the application of either party, either before or after verdict rendered, cause an entry to be made in the minutes of the court, specifying that such fact appeared; and no evidence shall be received by any taxing officer of such matter, other than a certified copy of such minutes, or the certificate of the judge who tried the cause.

Costs to be taxed before entered in record, &c. SEC. 49. No amount of costs shall be put into a judgment record, or collected on execution, until the same shall have been taxed by some proper officer.

Notice of taxation to be given. SEC. 50. No costs shall be taxed without sufficient notice being given to the adverse party or his attorney, of the time and place of such taxation.

CHAPTER 131.

OF THE FEES OF CERTAIN OFFICERS AND OTHER PERSONS, AND GENERAL PROVISIONS RELATIVE TO FEES.

Of the Fees of certain Officers.

Allowance of fees. SECTION 1. For the services mentioned in this chapter, hereafter done or performed in the several courts in this state, by the officers thereof, or in any proceeding authorized by law, the fees hereinafter prescribed shall be allowed.

Fees of Clerks of the Circuit Courts.

Fees of clerks of circuit courts.

SEC. 2. The fees of the clerks of the circuit and county courts, for any services herein specified, to be rendered by them, shall be as follows:

For issuing and sealing every writ when filled up by the clerk, twenty-five cents; and each exemplification or certificate, when required, twelve cents:

Entering the return of every writ, and filing such writ, twelve cents:

Entering an appearance, retraxit, discontinuance, non-suit or default, twelve cents:

Entering every rule in term, founded on motion, twelve cents for each folio:

Entering every other rule, not exceeding two folios, six cents for each folio, and for every additional folio, four cents:

For certified copies of rules, the same fees as for entering such rules:

Every report upon an assessment of damages, or other matters referred to him, twenty-five cents:

Every certificate, thirteen cents; but not to be allowed for certifying any paper to be a copy, for the copying of which he shall be paid:

Calling and swearing a jury, twenty-five cents:

Swearing each witness on trial, six cents; and swearing every constable to take charge of a jury, twelve cents:

Entering recognizance, twenty-five cents:

Entering every cause in a calendar for the court, and making a copy thereof for the bar, six cents:

Entering every cause or suit without process, twenty-five cents:

Receiving and entering a verdict, twelve cents:

Certified copy of the minutes of a trial, when requested, twenty-five cents:

Entering every final judgment, twenty-five cents:

Entering satisfaction of a judgment, twelve cents:

Drawing a special jury in any cause, thirty-eight cents:

Attendance in striking a special jury, certifying the names selected, and delivering such certificate to each party, fifty cents:

Reading and filing a habeas corpus, certiorari, or writ of error, twelve cents:

For a subpœna, summons, capias or execution, when issued by a clerk on request, and for sealing the same, twenty-five cents:

Filing a declaration or other pleading, an affidavit or other paper or proceeding, six cents; all papers annexed together, and filed at the same time, to be considered as one paper; and no allowance to be made for reading any paper or proceeding in any case:

Copies and exemplifications of records and of pleadings, to be returned on certiorari or writ of error; copies and exemplifications of all records, pleadings and proceedings, furnished on request, where no special provision is otherwise made, eight cents for each folio:

Searching the records or files in his office, if a copy is not required, ten cents for the records or files of each year, except for officers of the court:

Receiving and filing the papers of any insolvent, twelve cents in each case:

Copies of such papers, eight cents for each folio:

For administering the oath of office to any officer, and certifying the same, twelve cents:

For determining and certifying the sufficiency of the sureties in any bond, twenty-five cents:

Recording credentials of ordination of ministers, and giving certificate of the same, fifty cents:

Granting and issuing marriage licence, seventy-five cents:

Recording certificate of the solemnization of marriage, twenty-five cents:

Entering transcript of justice's judgment, twenty-five cents:

Entering appeal from justice's court, twenty-five cents:

For each blank writ furnished attorneys, with seal for the same, twelve cents:

Entering a surrender of bail, twelve cents:

Issuing commission to take deposition, fifty cents:

Issuing venire facias, twenty-five cents:

Certificates of jurors' or constables' attendance at court, to be paid from the county treasury, each, ten cents:

Entering forfeiture of recognizance, ten cents:

Entering discharge of bail, twenty cents.

For entering a declaration to become a citizen of the United State, twenty-five cents:

For a certified copy of such declaration, under the seal of the court, fifty cents:

For entering the final admission of an alien to the rights of citizenship, twenty-five cents:

For a certified copy thereof, under the seal of the court, fifty cents.

For all services required by law to be performed by such clerks respectively, and not specially provided for by law, such fees as the supreme court shall by general rule or order prescribe, corresponding as near as may be with the rates herein prescribed; provided, that the gross amount of the fees of any clerk of the circuit or county court shall, in no case, exceed the following sums: In case of a judgment by cognovit or confession, two dollars: In any case wherein there is no appearance by the defendant, three dollars; and in any other case, eight dollars.

Fees of Clerk of the Supreme Court.

Fees of clerk of the supreme court.

SEC. 3. For drawing a writ of error or other process issued under seal of the court, thirty-seven and one-half cents:

For affixing the seal to any process of the court, thirteen cents:

For filing the papers sent at one time from a circuit court, thirteen cents:

Reading and filing any petition relating to any proceeding in court, eight cents:

Entering the appearance or default of appellant or plaintiff, or of defendant or respondent, thirteen cents:

Entering every rule or order, thirteen cents:

For a certified copy of every such rule or order, and all papers, pleadings and proceedings filed with him, six cents for each folio:

Entering every decree or sentence, six cents for each folio:

Entering every judgment or order, fifteen cents, and six cents for each folio more than two:

Engrossing every remittitur to be sent to a circuit court, eight cents for each folio:

Every certificate given on request, relative to any matter or cause, twelve and one-half cents:

Taxing costs, eighteen cents:

Entering every satisfaction on the record, twelve cents:

Taking security in cases authorized by law, twenty-five cents:

Entering each cause in the calendar and making copy for the bar, six cents:

For searching records and files in his office, except for suitors and their attorneys, thirteen cents:

For services required by law, or the rules of the court, not herein provided for, such fees as the court shall direct:

Entering cause without process, twenty-five cents:

Admission of attorneys, one dollar.

Fees of Commissioners to take Testimony.

Fees of commissioners, &c.

SEC. 4. The persons to whom any commission shall be issued, to take testimony in any cause or matter pending in law or chancery, shall be entitled to receive the same fees as allowed to justices of the peace for the same services.

Powers and Fees of Judge of Probate as Court Commissioner.

Powers of judge of probate as court commissioner.

SEC. 5 The judge of probate in each organized county, or the person having probate jurisdiction, shall act as a court commissioner, and shall have and may exercise the power of a judge of the circuit court at chambers, and may administer oaths, take the acknowledgment of deeds and other instruments, allow writs of certiorari and injunction, of ne exeat and habeas corpus, may order and determine upon the amount and sufficiency of bail; he may take all such testimony and depositions of witnesses, to be used in cases at law and in equity, as may be provided for by rule or order of the circuit court; he may state accounts between parties in cases referred to him by order of the circuit court, and tax costs, and shall be entitled to receive compensation therefor, according to the provisions following in this section:

His fees.

For taking bail, thirty-eight cents:

Deciding upon an application for a writ of habeas corpus or certiorari, thirty-eight cents, whether such writ be allowed or not:

Every attendance upon the hearing of any motion for any order which such officer is authorized to grant, fifty cents; and the like fee for attendance upon any motion for any official act to be done by such officer, when no fee is specially provided for such act:

Admitting any person to prosecute as the next friend, or to defend as guardian of any infant, twenty-five cents:

Every order for a commission to examine witnesses, twenty-five cents:

Attending, settling and certifying interrogatories to be annexed to a commission, fifty cents:

Every order for the examination of a witness, conditionally, or upon any proceedings to perpetuate his testimony, twenty-five cents:

Every day's attendance on the examination of such witness, one dollar and fifty cents:

Every necessary order in the progress of a cause, except orders to stay proceedings, twenty-five cents:

Signing a judgment, twelve cents:

Taxing a bill of costs, twenty-five cents:

Taking the acknowledgment of satisfaction of a judgment or decree, twenty-five cents:

Taking a bond or recognizance, when the same is required or authorized by law, twenty-five cents:

For deciding on the sufficiency of sureties, and certifying such sufficiency in cases where it shall appear, twenty-five cents:

For every precept for a jury, summons for a witness, or attachment against a witness, twenty-five cents.

For presiding at and conducting any trial by a jury, swearing such jury, receiving and entering the verdict, or discharging them; or trying any issue in special proceedings without a jury, two dollars; but not to extend to any trial or inquest in any action at law:

Receiving and filing the petition and accompanying papers of an insolvent debtor, fifty cents:

For every order, warrant, certificate, or appointment of assignees in such proceeding, twenty-five cents:

For deciding on the propriety of directing an assignment of the estate of any insolvent debtor, one dollar:

Signing the discharge of any insolvent debtor, seventy-five cents:

For attending to the selection of referees, and certifying their appointment, fifty cents:

For every order, warrant or attachment, made or issued in any special proceeding authorized by law, twenty-five cents:

For every notice to any party, officer or person, required to be given by any such officer, twenty cents:

For every report, and all other papers and proceedings which he may be required by law to prepare, in order to be signed by himself, in cases where no specific allowance shall have been made for such paper or proceeding, for drafting the same, ten cents for each folio, and for copying, six cents for each folio:

Hearing and deciding on the return of a writ of habeas corpus, one dollar:

For administering an oath, in cases where no fee is specially provided for by law, and certifying the same when required, twelve cents:

For taking and certifying the acknowledgment or proof of any conveyance or mortgage of real estate, or any other instrument which by law may be recorded, twenty-five cents for each person making such acknowledgment, or whose execution of such conveyance, mortgage or instrument shall be proved:

Taking a surrender of principal in any cause, twenty-five cents:

For a commitment of such principal, twenty-five cents:

Allowing a writ of habeas corpus or certiorari, twenty-five cents:

A warrant of restitution, or to put any person in possession of lands, fifty cents:

For marrying, and making certificates and return thereof, one dollar and fifty cents:

For perusing a bill or petition for an injunction or ne exeat, and allowing or refusing writ, one dollar.

Fees of Judge of Probate, or Judge of County Court acting as Judge of Probate.

Fees of judge of probate

SEC. 6. For granting letters of administration, when not contested, seventy-five cents, and when contested or opposed, one dollar and fifty cents:

Hearing any complaint, or an application for the appointment of a guardian, fifty cents:

Appointing a guardian, fifty cents; and when one guardian shall be appointed for more than one person at the same time, twenty-five cents for each person after the first, for whom such guardian shall be appointed:

Decree for probate of a will when not contested, seventy-five cents, when contested, one dollar and fifty cents:

Decree for settling an estate, fifty cents:

Partition of real estate, one dollar and fifty-cents:

Order for distribution, fifty cents:

Examining and allowing an inventory, thirteen cents for each folio:

Administering an oath to an executor or other person, and certifying the same when necessary, twelve cents:

Examining and allowing accounts of executors, administrators or other persons, for the first folio, fifty cents, and for each additional folio, ten cents:

For each citation, summons or other process, twenty-five cents:

Warrant to appraise or divide an estate, fifty cents:

Issuing a commission to examine and allow claims against an estate, thirty-eight cents:

Approving and filing a bond given on an appeal, twenty-five cents:

Approving securities of executors or others, twenty-five cents:

Each order to divide an estate among heirs, or to set off dower, twenty-five cents:

Order for allowance to a widow, or to children under seven years of age, twenty-five cents:

Appointment of agent on partition of real estate, twenty-five cents:

Order for sale of personal estate, or for publication of any no-

CHAPTER 131.

tice, or any other ordinary order in proceedings before him, where no other provision is expressly made, twenty-five cents:

Each order for sale of real estate to pay debts of an estate, fifty cents:

Extending the time for settling an estate, or examining and allowing claims against an estate, twenty-five cents:

Granting reference of accounts of executors or administrators, or allowing report thereon, fifty cents:

For a bond of executors, administrators or guardians, on an appeal, twenty-five cents:

Disallowing application for letters of administration or probate of a will, to be paid by the party applying, fifty cents:

For a warrant to set off dower, fifty cents:

Ordering and drawing a quietus, fifty cents:

Proportioning an insolvent estate among the creditors, seventy-five cents:

Entering and filing a caveat, twelve cents:

Entering the account of an executor, administrator, or guardian, ten cents for each folio:

Entering each oath of an executor or administrator, six cents:

Searching the records or files in his office, for each year, six cents:

Recording wills and the proof thereof, letters of administration, of guardianship, and every other matter required to be recorded, for each folio, ten cents; and where any will or other matter is in any other than the English language, eighteen cents for each folio:

For a translation of any will from any other than the English language, fifteen cents for each folio:

Copies and exemplifications of the probate of a will, or of letters testamentary or of administration, or of any other proceeding or order had or made before him, or of any other papers filed or recorded in his office, transmitted on appeal, or furnished on request to any person, eight cents for each folio:

For all services required by law to be performed by judges of probate, for which a compensation is not herein provided, such fees as shall from time to time, be established by the supreme court, by general rules, corresponding, as near as may be, with the rates herein specified; provided that the whole amount of fees taxed by any judge of probate in his own behalf, in any case not contested, shall in no case exceed fifteen dollars, unless the same be audited and certified to be just, by the judge of the circuit court of the county.

Fees of County Judge.

Fees of county judge.

SEC. 7. In addition to the fees allowed by law for doing probate business, the judge of the county court shall receive the following compensation:

For each day actually engaged in holding court for the transaction of business, other than probate business, two dollars, to be paid out of the county treasury, on the certificate of the clerk, specifying the number of days that such judge has actually attended:

For all services in any amicable suit, when judgment is confessed on the first appearance of parties, seventy-five cents:

For every continuance or adjournment of a cause, fifty cents:

For taking bail, recognizance or other security, when required by law, and approving the same, thirty cents:

For every order or notice required to be made or given by a county judge in the progress of a cause, except orders made on the day of trial, fifty cents:

For all services in a cause wherein judgment is confessed by defendant, or cause disposed of without trial on the merits, on return of process, one dollar:

For all services on the trial of a cause without a jury, including the rendition of judgment, one dollar and fifty cents:

For all services on the trial of a cause with a jury, including receiving and entering verdict and rendering judgment, two dollars: if the jury be discharged and a new trial ordered, or the cause otherwise disposed of, two dollars:

For every judgment of discontinuance after adjournment or dismissal of suit or proceedings without trial, seventy-five cents.

Fees of Executors and Administrators.

Fees of executors, &c.

SEC. 8. For actual services, and in lieu of all other fees, one dollar per day, and fifty cents for each half day, and their actual and necessary disbursements for the benefit of the estate; but the probate court may allow executors and administrators, in cases of unusual difficulty or responsibility, such further sum as the judge may deem reasonable.

Fees of Witnesses.

Fees of witnesses.

SEC. 9. For attending in any suit or proceeding pending in a court of record, seventy-five cents for each day, and thirty-seven and one half cents for each half day:

For attending in any justice's court, or before any officer, person or board, authorized to take the examination of witnesses, fifty cents for each day, and twenty-five cents for each half day:

For traveling, at the rate of six cents per mile in coming to the place of attendance, to be estimated from the residence of such witness if within this state, or from the boundary line of this state which such witness passed in coming, if his residence be out of the state. But this section shall not be so construed as to allow any fees to witnesses on behalf of the people in criminal prosecutions, or in suits for the recovery of fines, penalties or forfeitures.

The secretary of state, state treasurer, attorney general, register and treasurer of the state land office, any clerk, register of deeds, county surveyor or judge of probate, attending on a subpœna requiring the same with bills, records, or other written evidence, shall be entitled to one dollar per day, and for traveling, at the rate of six cents per mile in coming and returning from the residence of such witness.

CHAPTER 131. *Fees of Sheriffs in executing Process issued out of the Courts of Law and Equity, and by judicial and other Officers, and for other Services.*

Fees of sheriffs, &c.

SEC. 10. For serving a summons, writ of replevin, or any other process by which a suit shall be commenced in a court of law, or a subpœna to appear and answer, in chancery, fifty cents when service is made on one defendant only, and for the service on each additional defendant, twenty-five cents:

For traveling in making such service, five cents per mile for going only, to be computed in all cases from the court house of the county in which the service is made, or from the place where the court has usually been held therein:

For taking a bond of a plaintiff in replevin; or taking a bond on the arrest of a defendant, or in any other case, where he is authorized to take the same, thirty-eight cents:

For a certified copy of such bond when requested, twenty-five cents:

For a note of every capias delivered to a defendant on request, six cents:

For a copy of every summons, scire facias, or declaration served by him, when made by the sheriff, six cents for each folio:

For a copy of every other writ, when demanded or required by law, thirteen cents:

For serving an attachment for the payment of money, or an execution for the payment of money, or a warrant issued for the same purpose, and delivered to him by the county treasurer or any supervisor, for collecting the sum of two hundred and fifty dollars or less, two and a half per cent, and for any sum more than two hundred and fifty dollars, one and one quarter of one per cent:

Advertising goods or chattels, lands or tenements, for sale, on any execution, if a sale be made, one dollar; and if the execution be stayed or settled, after advertising and before sale, fifty cents:

The fees allowed by law and paid to any printer by such sheriff, for publishing an advertisement of the sale of real estate for not more than six weeks; and for publishing the postponement of any such sale, the expense shall be paid by the party requiring the same.

The fees herein allowed for the service of an execution, and for advertising thereon, shall be collected by virtue of such execution in the same manner as the sum therein directed to be levied:

But when there shall be several executions against the defendant, at the time of advertising his property, in the hands of the same sheriff, there shall be but one advertising fee charged on the whole, and the sheriff shall elect on which execution he will receive the same:

For every certificate on the sale of real estate, fifty cents; and for each copy thereof, twenty-five cents; which, together with the register's fee for filing the same, shall be collected as other fees on execution:

For drawing and executing a deed, pursuant to a sale of real estate, one dollar, to be paid by the grantee in such deed:

Serving a writ of possession or of restitution, putting any person entitled, into the possession of premises, and removing the occupant, one dollar; and the same compensation for traveling as is herein allowed on other writs:

Taking a bond for the liberties of the jail, thirty-eight cents:

Summoning a jury upon a writ of inquiry, attending such jury, and making and returning the inquisition, one dollar and fifty cents:

Summoning a special jury struck pursuant to an order of the court, and returning the panel, one dollar and twenty-five cents:

Summoning a jury, pursuant to any precept or summons of any officer, in any special proceeding, seventy-five cents; and for attending such jury, when required, fifty cents:

Bringing up a prisoner upon habeas corpus, to testify or answer in any court, one dollar; and for traveling each mile from the jail, thirteen cents:

For attending any court with such prisoner, one dollar per day, besides actual necessary expenses:

Bringing up a prisoner upon a habeas corpus, with the cause of his arrest and detention, one dollar; and for traveling, thirteen cents for each mile from the jail:

Attending before any officer with a prisoner, for the purpose of having him surrendered in exoneration of his bail; or attending to receive a prisoner so surrendered, who was not committed at the time, and receiving such prisoner into his custody, in either case, one dollar:

Attending a view when ordered by the court, one dollar and twenty-five cents per day, including the time occupied in going and returning:

Serving an attachment upon any ship, boat or vessel, in proceedings to enforce any lien thereon, created by law, fifty cents, with such additional compensation for his trouble and expenses in taking possession of and preserving the same, as the officer issuing the warrant shall certify to be reasonable:

For making and returning an inventory and appraisal of property attached in any case, one dollar per day each to the appraisers, for each day actually employed, and fifty cents for each half day; and for drafting the inventory, twenty-five cents for each folio; and for copying the same, six cents for each folio:

For selling any ship, boat or vessel, or the tackle, apparel and furniture thereof so attached, and for advertising such sale, the same fees as for sales on execution:

For giving notice of any general or special election, to the inspectors of the different townships and wards of his county, fifty cents for each township or ward, and the expenses of publishing such notice as required by law; such fees and expenses to be paid by the county, as other contingent expenses thereof:

For any services which may be rendered by a constable, the same fees as are allowed by law for such services to a constable:

For attending the supreme court, one dollar and fifty cents for each day, to be allowed by the auditor on the certificate of the clerk, and paid out of the state treasury:

For attending a circuit court, one dollar and fifty cents for each day, to be allowed and paid by the county, in the same manner as other contingent charges of the county:

For summoning grand or petit jurors to attend the circuit court, thirty-eight cents for each juror summoned:

Serving a subpœna for witnesses, thirteen cents for each witness summoned, and ten cents for each mile actually traveled in going only; but when two or more witnesses live in the same direction, traveling fees shall be charged only from the fartherest:

Keeping and providing for a debtor in jail, in all cases where the debtor is unable to support himself, thirty cents for each day:

For mileage on every execution, five cents per mile for going only, to be computed from the court house of his county:

For selling lands on the foreclosure of a mortgage by advertisement, and executing a deed to the purchaser, and for all services required on such sale, three dollars.

Fees of Coroners.

Fees of coroners.

SEC. 11. For all services rendered by them, the same fees as are herein allowed to sheriffs for similar services:

For confining a sheriff in any house on civil process, fifty cents for each day, to be paid by such sheriff before he shall be entitled to be discharged from such confinement, unless otherwise ordered by the court.

Fees of Constables.

Fees of constables

SEC. 12. Constables may be allowed to receive the following fees:

For serving a warrant or other writ, not herein provided for, on each person named therein, twenty-five cents:

For a copy of every summons delivered on request, or left at the place of residence of defendant, twelve and a half cents:

For serving a subpœna or summons, on each person named therein, twelve and a half cents:

For serving an attachment, fifty cents:

For each copy of an attachment, twelve and a half cents;

For each copy of inventory of property seized on attachment, twelve and a half cents:

For issuing summons on garnishee, twenty-five cents:

For copy of any affidavit or other paper not otherwise enumerated, per folio, ten cents:

For posting up each notice, twelve cents:

For each mile actualy travelled to serve any process, to give, or post up notice, six cents:

Committing to prison, thirty-seven cents:

For summoning a jury, fifty cents:

For writing a list of jurors, twelve cents:

For attending on a jury, twenty-five cents:

On all sums made on execution and paid over, charged upon the defendant, five per cent:

For notifying a plaintiff of a service of a warrant, or summons, or attachment, returnable in three days, twelve cents:

For serving every writ of replevin, fifty cents:

For summoning and swearing appraisers, and taking appraisment, fifty cents:

For taking and approving security in any case, twenty-five cents:

Sec. 13. When the services in the last section mentioned are performed by any other person, the same fees shall be allowed as constables are entitled to receive, and no more.

When services of constable performed by another.

Fees of Notaries Public.

Sec. 14. For drawing and copy of protest of the non-payment of a promissory note or bill of exchange, or of the non-acceptance of such bill, fifty cents, in the cases where by law such protest is necessary, but in no other case:

Fees of notaries public.

For drawing and copy of every other protest, twenty-five cents:

For drawing, copy, and serving every notice of non-payment of a note, or non-acceptance of a bill, twenty-five cents:

For drawing any affidavit, or other paper or proceeding, for which provision is not herein made, twenty cents for each folio, and for copying the same, six cents for each folio:

For taking the acknowledgment of deeds, and for other services authorized by law, the same fees as are allowed to other officers for similar services.

Fees of Justices of the Peace.

Sec. 15. Justices of the peace may be allowed to receive the following fees, and may tax the same in all cases where applicable:

Fees of justices.

For a summons, warrant or subpœna, twenty-five cents:

For a venire for a jury, twenty-five cents:

For a warrant in a criminal case, twenty-five cents:

For taking a recognizance of bail, twenty-five cents:

For administering any oath, six cents:

For certifying the same when administered out of court, six cents:

For a writ of attachment, twenty-five cents:

For entering a judgment, twenty-five cents:

For every adjournment, twelve cents:

For every bond, recognizance or security directed by law to be taken, and approved by the justice, twenty-five cents:

For swearing a jury, twenty-five cents:

For taking an examination, deposition or confession, per folio, twelve cents:

For copy of proceedings, or of any paper or examination, in any case, when demanded, per folio, ten cents:

For entering a satisfaction of judgment, twelve cents:

For entering amicable suit without process, twenty-five cents:

For a transcript of judgment, twenty-five cents:

For opening a judgment for re-hearing, twenty-five cents:

For filing every paper required to be filed, five cents:

For issuing notice to take deposition, twenty-five cents:

For taking recognizance, certifying oath or affidavit, and making return to an appeal, including travel, one dollar:

For making return to writ of certiorari, per folio, ten cents:

For a search warrant, twenty-five cents:

For every affidavit or other paper, drawn by the justice, for

CHAPTER 131.

which no other allowance is made by law, per folio, twelve cents:

For a commitment to jail, twenty-five cents:

For an order to bring up prisoner, twenty-five cents:

For an order to discharge prisoner, issued to jailer, twenty-five cents:

For discharging a prisoner after a hearing on motion for discharge, twelve cents:

For an execution, twenty-five cents:

For every other writ, not herein enumerated, twenty-five cents:

For taxing costs, twelve cents:

For marrying and making return thereof, one dollar and fifty cents, and such other sum as may be allowed by the party making the application:

For holding an inquisition in cases of forcible entry and detainer, in addition to other fees, one dollar:

For taking and certifying the acknowledgment of a deed, for each grantor named therein, twenty-five cents:

For traveling to perform any duty, when not otherwise provided for, and such travel is necessary, going, per mile, six cents.

Provisions in relation to Fees in Justices' Courts.

Costs in civil cases before justices; when justice may give or refuse.

SEC. 16. In all civil cases at law, unless otherwise provided, the party in whose favor judgment is given shall recover costs, and the justice's court may give or refuse costs on all motions, at their discretion, unless otherwise directed.

When justice to tax costs; notice not necessary.

SEC. 17. At the time of entering a judgment for costs in any case, the justice may proceed to tax the costs in such cause, and no notice of such taxing need be given to the party against whom judgment is rendered.

Fees to witnesses for travel, not allowed without proof.

SEC. 18. The justice shall allow no fees for the travel of witnesses, unless the same be proved on the oath of some person qualified to testify in the cause.

When allowed for travel in serving subpœna.

SEC. 19. No fees shall be allowed for travel in serving a subpœna, unless the same be charged by a constable or sheriff, or be proved by the oath of the person who served the same.

Fees of but two witnesses allowed for each fact; when to be apportioned.

SEC. 20. The attendance of only two witnesses to each particular fact before a justice of the peace, shall be taxed in the bill of costs; and if any witness shall attend upon two or more cases on the same day, before the same justice's court, his fees shall be equally proportioned among the parties who shall summon him.

When fees for copies, depositions, &c., not allowed.

SEC. 21. No fees for copies or exemplifications of documents or papers, or for depositions, shall be allowed, unless such copies or depositions were used upon the trial.

When allowance made for disbursments.

SEC. 22. No allowance for disbursements, except to officers, shall be allowed, unless the items are particularly specified, and proved to the justice; and the same were, in the opinion of the justice, necessary and reasonable in amount.

Charge or service may be disproved.

SEC. 23. The justice shall hear any evidence which may be offered to him, to prove that any charge is unreasonable, or that the service has not been rendered.

Return of sheriff or constable to be evidence.

SEC. 24. The return of a sheriff or constable to any writ, shall be deemed prima facie evidence that such return is correct, and that the service has been rendered, or disbursement made.

Justice may require constable to attend trial; his fees.

SEC. 25. The justice shall have power, when he shall deem it necessary, to command any constable to attend at the trial of a cause, and shall make an entry thereof in his docket, and may tax in the bill of costs, fifty cents for each half day such constable shall so attend by his command.

Fees of Registers of Deeds.

Fees of registers of deeds.

SEC. 26. For entering and recording any deed or other instrument, ten cents for each folio, to be paid when the same is left for record:

For copies of any records or papers, when required, seven cents for each folio:

For recording any deed or other paper, in any other than the English language, twenty cents for each folio:

For every entry of a discharge of a mortgage in the margin of the record, ten cents:

For filing every other paper, and making an entry thereof, when necessary, six cents:

Searching for every such paper, on request, three cents for each paper examined.

Fees of Appraisers, Commissioners, and others.

Fees of appraisers, commissioners, &c.

SEC. 27. All appraisers of estates of deceased persons, appraisers of property taken on writ of attachment or replevin, persons appointed under any legal process, or order for assigning dower, or making partition of real estate, sheriff's aids in criminal cases, and all other private persons performing any other like service required by law, or in the execution of legal process, where no express provision is made for compensation therefor, shall be entitled to one dollar for each day, and fifty cents for each half day, for their services, and four cents a mile for travel in going and returning.

Fees of Jurors.

Fees of jurors.

SEC. 28. Each grand and petit juror, except talesman, shall be entitled to one dollar and fifty cents for each day's attendance upon any circuit court, and six cents for each mile traveled in going and returning by the most usual route, to be paid out of the treasury of the county, by the treasurer thereof, on the certificate of the clerk of the court:

Each talesman summoned and acting as a juror in a court of record, shall be entitled to twenty-five cents for his services in each cause, to be paid in the same manner herein provided for the payment of grand jurors:

Each juror sworn in any action in a justice's court, or before any sheriff, on any writ of inquiry, shall be entitled to twenty-five cents, to be paid in the first instance by the party requiring such jury.

In each cause in which a jury shall be impannelled in any circuit court, the plaintiff shall pay to the clerk thereof, for the use of the county, the sum of three dollars, immediately after the swearing of such jury, which shall be immediately paid by the clerk to the county treasurer:

Each juror sworn before any coroner, on any inquest taken by him, shall be entitled to one dollar for each day's attendance on such inquest.

Fees of Clerk of County Court, and of Witnesses, Jurors, Sheriffs, &c., in said Court.

Fees of clerk of county court.

SEC. 29. The fees of the clerk of the county court shall be the same as those allowed by law to the clerk of the circuit court for similar services, but no fees shall be charged except for service necessarily and actually rendered.

Fees of witnesses and jurors in county courts.

SEC. 30. The fees of witnesses and jurors in the county courts shall be the same as are allowed by law to jurors and witnesses in the circuit courts; but in all cases in the county courts the fees of the jury shall be paid in the first instance by the party requiring such jury.

Fees of sheriffs and constables in county courts.

SEC. 31. The fees of sheriffs and constables for services rendered in county courts, and for the service of process therefrom, shall be such as are allowed by law to constables for similar services in civil proceedings before justices of the peace, and where no fees for such services are provided for by law, they shall be entitled to such fees as are allowed to sheriffs for similar services in the circuit court.

Fees in the Office of the Secretary of State.

Fees in office of secretary of state.

SEC. 32. For a copy of any act or resolution of the legislature, or of any other record, proceedings or papers kept in the office of the secretary of state, furnished to any private person, on request, twelve cents for each folio:

For a certificate and seal thereto, twenty-five cents.

Fees to be allowed the Party recovering Judgment, in case an Attorney shall have been employed.

Fees allowed party recovering in law.

SEC. 33. For a retaining fee, three dollars; but no such fee shall be allowed to the plaintiff's attorney on any suit upon a bond taken on arrest of a defendant, nor to the defendant's attorney upon confessing judgment, when no suit shall have been actually brought:

A term fee, for each term of the court during the progress of a cause, not exceeding three terms in any one cause, one dollar:

Drawing all process and returns, admission of guardians or next friends, recognizances of bail in suits against the bail only, pleadings, adjournments, suggestions, entries, special verdicts, bills of exceptions, demurrers to evidence, and cases, which shall be necessary, and all other necessary entries and proceedings in a cause, according to the practice of court, and for which no special provision is herein made, for each folio, twenty-five cents:

For engrossing or copying the same, including all records, writs, returns, pleadings, instruments, and all other writings necessary, inserted, for each folio, twelve cents:

For every necessary ordinary motion, sixty-two and a half cents; but not to be allowed upon any confession of judgment, where no suit shall have been actually brought, for any motion except for judgment:

For attending the execution of a writ of inquiry, or the assessment of damage by the clerk, one dollar and fifty cents:

For attending the trial of a cause, one dollar and fifty cents:

Arguing a demurrer, special verdict, bill of exceptions, demurrer to evidence, any enumerated motion, or any matter brought up by writ of error, certiorari, habeas corpus, or a return to a mandamus or prohibition, or attending prepared for such argument only, when pursuant to notice from the adverse party, three dollars:

For a brief and the copies thereof, one dollar:

Drawing a judgment, seventy-five cents:

Attendance on striking a jury, and on the examination of a witness, out of court, fifty cents:

Such fees to be taxed and recovered for the use and benefit of the party recovering judgment, and not to be paid to the attorney without a written order from such party; provided, the fees shall not, in any one case, exceed sixteen dollars; and in actions on contract, when the amount recovered is less than two hundred dollars, shall not exceed ten dollars.

Fees to be allowed the party recovering Judgment in Chancery, in case a Solicitor shall have been employed.

Fees allowed party recovering in chancery.

SEC. 34. Drawing every bill, answer or other pleading or proceeding in a cause, for every folio, twenty-five cents:

For every engrossment of such drafts to file, for every folio, ten cents:

For every other necessary copy, seven cents:

Attending the judge out of term, upon petition or upon any special motion, one dollar:

Attending the court of chancery in term, upon a special motion founded on previous notice, one dollar:

And if such motion be argued or opposed, one dollar and fifty cents:

Serving every rule or order or copy of interrogatories, twenty-five cents:

Serving a subpœna to appear and answer on an injunction, seventy-five cents:

Every necessary notice or summons actually served, including a copy thereof and service, thirty-seven cents:

Drawing instructions for the examination of each witness, twenty-five cents:

Drawing brief for counsel, on any special motion or petition of which notice shall have been given, one dollar:

Drawing brief for counsel, upon the hearing of a cause before the court, when there has been an answer, plea or demurrer to the

CHAPTER 131.

bill, or before any proper officer on a reference to take and state an account, two dollars:

Drawing charges or discharges before a master, for each folio, twenty-two cents, before any proper officer:

Attending a proper officer upon any matter referred to him, not herein otherwise provided for, if argued, one dollar:

If not argued, fifty cents:

Attending a proper officer on a summons or upon the taxation of costs, fifty cents:

Copy of a bill of costs delivered with notice of taxation, or filed after taxation, if before a decree, fifty cents:

If after a decree, one dollar: Provided, that the costs in each case shall not exceed twenty dollars.

Fees for publishing in Newspapers, Legal Notices and Advertisements.

Printers' fees for publishing insolvent notices

SEC. 35. For publishing notices of any application of an insolvent for six weeks, and furnishing the evidence of such publication, one dollar and sixty-seven cents; if published ten weeks, two dollars.

Form of notice.

SEC. 36. Such notice may be published in the following manner:

1. A general heading, stating whether such notices are for the purpose of being discharged from debt, or for the purpose of having the person exonerated from imprisonment, shall be prefixed to each class of applicants; next, the name of the applicant; next, the date of the first publication of such notice; next, the name of the officer before whom the creditors are required to appear; next, the place appointed for such appearance; next, the time for such appearance. And every such application shall be deemed as valid as if such notice had been published at length.

Fees for publishing other notices

SEC. 37. For publishing any other notice, or any order, citation, summons, or any other proceeding or advertisement, required by law to be published in any newspaper, not more than forty cents per folio for the first insertion, and twenty cents per folio for each insertion after the first.

When and how notice of sale of mortgaged premises shall be served.

SEC. 38. When notice of any sale by virtue of a mortgage, shall be published in other than the county in which the premises are situated, a copy of such notice shall be served at least four weeks before the time of such sale, on the person in possession of the mortgaged premises, in all cases where the same are occupied; and where they are not occupied, and the mortgagor, his heirs or personal representatives, shall reside in the county where such premises lie, then upon such mortgagor, his heirs or personal representatives, as the case may be. Proof of the service of such notice may be made, certified and recorded in the same manner, and with the like effect, as proof of the publication of a notice of sale under a mortgage.

Proof of service, &c.

General Provisions.

Every officer shall set up table of his fees; penalty for neglect.

SEC. 39. Every officer, whose fees are herein before ascertained, limited and appointed, shall publish and set up in his office fair tables of his fees, according to this act, within six months after the passage thereof, in some conspicuous place, for the inspection of all persons who have business in such office, upon pain of forfeiting for each day, the same shall not be put up through such officer's neglect, a sum not exceeding two dollars, which may be recovered by action of debt in the name of any person before any justice of the peace of the same county.

This chapter not to apply to special cases.

SEC. 40. The allowance of any fees by this chapter, shall not apply to any case where special provision is otherwise made by law for any particular service, but the fees for such service shall be such as are provided in the statute requiring the service, or providing the compensation therefor.

Certain searches, &c. to be gratuitous.

SEC. 41. The secretary of state, treasurer, attorney general and register and treasurer of the state land office respectively, shall be authorised to require searches in the respective offices of each other, and in the offices of the clerks of the supreme court, of the several circuit courts, of the county courts, or registers of deeds, for any papers, records or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof, and extracts threfrom, without the payment of any fee or charge whatever.

"Folio" defined.

SEC. 42. The term "folio," when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure necessarily used, as a word; and any portion of a folio, when in the whole draft or paper there shall not be a complete folio, and when there shall be any excess over the last folio, shall be computed as a folio.

Extortion prohibited.

SEC. 43. No judge, justice, sheriff or other officer whatever, or other person to whom any fees or compensation shall be allowed by law for any service, shall take or receive any other or greater fee or reward for such service, but such as is or shall be allowed by the laws of this state.

When fees not to be taken.

SEC. 44. No fee or compensation allowed by law, shall be demanded or received by any officer or person for any service, unless such service was actually rendered by him, except in the case of prospective costs hereinafter specified; but this section shall not prevent any officer from demanding any fee herein allowed for any service of which he is entitled by law to require the payment, previous to rendering such service.

Penalty.

SEC. 45. A violation of either of the two last sections shall be deemed a misdemeanor; and the person guilty thereof shall be liable to the party aggrieved for treble the damages sustained by him.

Charges for services not actually rendered.

SEC. 46. No fee shall be taxed for services as having been rendered by any attorney, solicitor, clerk, sheriff, or other officer, in the progress of a cause, unless such service was actually rendered, except when otherwise expressly provided.

Prospective costs.

SEC. 47. Prospective costs may be charged and taxed for filing decree, and for one execution.

Allowance for one draft only.

SEC. 48. Whenever any allowance is made for drafting any process, pleading or proceeding, it shall be made for only one draft of the same, although several may have been issued and used.

What not to be computed part of draft.

SEC. 49. No record, writ, return, pleading, instrument or other writing, copied into any proceeding, entry, process or suggestion, shall be computed as any part of the draft of such proceeding, entry, process or suggestion.

Fees paid for certified copies allowed.

SEC. 50. The legal fees paid for certified copies of the depositions of witnesses, filed in any clerk's office, and of any documents or papers recorded or filed in any public office, necessarily used on the trial of a cause, or on the assessment of damages, shall be allowed in the taxation of costs.

When attorneys, &c., not allowed fees as witness

SEC. 51. No attorney, solicitor or counsel in any cause, shall be allowed any fee for attending as a witness in such cause.

Officer receiving fees to give receipt in items.

SEC. 52. Every officer, upon receiving any fees for any official duty or service, shall, if required by the person paying the same, make out in writing and deliver to such person, a particular account of such fees, specifying for what they respectively accrued, and shall receipt the same; and if he refuse or neglect to do so, he shall be liable to the party paying the same for three times the amount so paid.

Fees for administering oath of office.

SEC. 53. No fee shall be charged by any officer for administering the oath of office to any member of the legislature, to any military officer or to any township officer, and no more than twelve cents shall be charged for administering such oath to any other officer.

Fees allowed one officer to be allowed another for same services.

SEC. 54. When a fee is allowed to one officer, the same fee shall be allowed to other officers for the performance of the same services, when such officers are by law authorized to perform such services.

When poor and foreign witnesses in behalf of state to be paid out of county treasury.

SEC. 55. When any person shall attend a court of record as a witness in behalf of the state, upon the request of the public prosecutor, or upon a subpœna, or by virtue of a recognizance for that purpose, and it shall appear that such person has come from any other state or territory of the United States, or from any foreign country, or that such person is poor, the court may by order on its minutes, direct the county treasurer of the county in which the court shall be sitting, to pay to such witness such sum of money as shall seem reasonable, for his expenses.

When fees of prosecution in name of state to be paid out of county treasury.

SEC. 56. When any prosecution, instituted in the name of this state, for breaking any law of this state, shall fail, or where the defendant shall prove insolvent, or escape, or be unable to pay the fees when convicted, the fees shall be paid out of the county treasury, unless otherwise ordered by the court: Provided, that no fees shall be paid out of the county treasury for mileage to the district attorney.

Exception

Attorney general may issue subpœnas and compel attendance of witnesses, &c.

SEC. 57. The attorney general is authorized to issue subpœnas, and compel the attendance of witnesses on behalf of the state, without paying or tendering fees in advance; and any witness failing or neglecting to attend, after being served with a subpœna, may be proceeded against, and shall be liable in the same manner as provided by law in other cases where fees have been paid or tendered.

When clerk to give witness certificate of attendance, &c.

SEC. 58. The clerk of any court, at which any witness shall have attended on behalf of the state in a civil action, shall give to such witness a certificate of travel and attendance, which shall entitle him to receive the amount from the state treasury.

Construction of two preceding sections.

SEC. 59. The provisions of the next two preceding sections of this chapter, shall extend to all suits and information brought in the name of the attorney general, or any other person or persons for the benefit of the state.

PART IV.

OF CRIMES AND THE PUNISHMENT THEREOF, OF PROCEEDINGS IN CRIMINAL CASES, OF PRISONS AND THEIR MANAGEMENT AND DISCIPLINE, OF THE PUBLICATION OF THE REVISED STATUTES AND THE REPEAL OF FORMER STATUTES.

TITLE XXX.

OF CRIMES AND THE PUNISHMENT THEREOF.

CHAPTER 132. Of the rights of persons who are accused of crimes and offences.
133. Of offences against the lives and persons of individuals.
134. Of offences against property.
135. Of forgery and counterfeiting.
136. Of offences against public justice.
137. Of offences against the public peace.
138. Of offences against public policy.
139. Of offences against chastity, morality and decency.
140. Of offences against the public health.
141. General provisions concerning crimes and punishments.

CHAPTER 132.

OF THE RIGHTS OF PERSONS WHO ARE ACCUSED OF CRIMES AND OFFENCES.

When person not to answer for criminal offence except on indictment.

SECTION 1. No person shall be held to answer for criminal offence, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army, or militia when in actual service in time of war or public danger.

Rights of the accused.

SEC. 2. In all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment or information, to a speedy public trial by an impartial jury of the county or district wherein the offence shall have been committed, which county or district shall have been previously ascertained by law.

What necessary to conviction

SEC. 3. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him by his plea or demurrer, or by the verdict of a jury accepted and recorded by the court.

When not held to answer second indictment.

SEC. 4. No person shall be held to answer on a second indictment, for an offence of which he has been acquitted by the jury upon the facts and merits on a former trial; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted.

When shall be.

SEC. 5. If any person who is indicted for an offence, shall on his trial, be acquitted upon the ground of a variance between the indictment and the proof, or upon any exception to the form or to the substance of the indictment, he may be arraigned again on a new indictment, and may be tried and convicted for the same offence, notwithstanding such former acquittal.

Not to be punished unless legally convicted.

SEC. 6. No person who is charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person.

CHAPTER 133.

OF OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

The killing of a human being what to be.

SECTION 1. The killing of a human being, without the authority of law, by poison, shooting, stabbing, or any other means, or in any other manner, is either murder, manslaughter, or excusable or justifiable homicide, according to the facts and circumstances of each case.

When murder in the first degree.

Punishment.

SEC. 2. Such killing, when perpetrated from a premeditated design to effect the death of the person killed, or of any human being, shall be murder in the first degree, and the person who shall be convicted of the same shall suffer the punishment of death:

When in the second degree, and punishment.

When perpetrated by any act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual, shall be murder in the second degree, and shall be punished by imprisonment in the state prison for life:

Third degree, and punishment.

When perpetrated without any design to effect death, by a person engaged in the commission of any felony shall be murder in the third degree, and shall be punished by imprisonment in the state prison not more than fourteen years nor less than seven years.

What killing of human being in other cases to be.

SEC. 3. The killing of one human being, by the act, procurement or omission of another, in cases where such killing shall not be murder according to the provisions of this chapter, is either justifiable, or excusable homicide, or manslaughter.

Justifiable homicide.

SEC. 4. Such homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either in obedience to any judgment of a competent court; or when necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or when necessarily committed in retaking felons who have been rescued, or who have escaped; or when necessarily committed in arresting felons fleeing from justice.

Ib.

SEC. 5. Such homicide is also justifiable, when committed by any person, in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house, in which such person shall be: or,

2. When committed in the lawful defence of such person, or of his or her husband, wife, parent, child, master, mistress, or servant, when there shall be a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and there shall be imminent damage of such design being accomplished: or

3. When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed; or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Excusable homicide.

SEC. 6. Such homicide is excusable when committed, by accident and misfortune, in lawfully correcting a child or servant; or in doing any other lawful act by lawful means with usual and ordinary caution, and without any unlawful intent; or by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, without any undue advantage being taken, and without any dangerous weapon being used, and not done in a cruel or unusual manner.

When jury to find not guilty on indictment for murder, &c,

SEC. 7. Whenever it shall appear to the jury, on the trial of any person indicted for murder or manslaughter, that the alleged homicide was committed under circumstances, or in cases where by law such homicide was justifiable or excusable, the jury shall render a general verdict of not guilty.

Manslaughter in the first degree.

SEC. 8. The killing of a human being, without a design to effect death, by the act, procurement or culpable negligence of any other, while such other is engaged in the perpetration of any crime or misdemeanor not amounting to felony; or in an attempt to perpetrate any such crime or misdemeanor, in cases where such killing would be murder at the common law, shall be deemed manslaughter in the first degree.

Ib.

SEC. 9. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter in the first degree.

Ib.

SEC. 10. The wilful killing of an unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.

Manslaughter in the second degree.

SEC. 11. Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance what-

CHAPTER 133

ever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.

Ib.

SEC. 12. The killing of a human being without a design to effect death, in a heat of passion, but in a cruel and unusual manner, unless it be committed under such circumstances as to constitute excusable or justifiable homicide, shall be deemed manslaughter in the second degree.

Ib.

SEC. 13. Every person who shall unnecessarily kill another, either while resisting an attempt by such other person to commit any felony, or to do any other unlawful act; or after such attempt shall have failed, shall be deemed guilty of manslaughter in the second degree.

Manslaughter in the third degree.

SEC. 14. The killing of another, in the heat of passion, without a design to effect death, by a dangerous weapon, in any case except such wherein the killing of another is herein declared to be justifiable or excusable, shall be deemed manslaughter in the third degree.

Ib.

SEC. 15. The involuntary killing of a human being, by the act, procurement, or culpable negligence of another, while such other person is engaged in the commission of a trespass or other injury to private rights or property, or engaged in an attempt to commit such injury, shall be deemed manslaughter in the third degree.

Ib.

SEC. 16. If the owner of a mischievous animal, knowing its propensities, wilfully suffer it to go at large, or shall keep it without ordinary care, and such animal, while so at large or not confined, kill any human being who shall have taken all the precautions which the circumstances may permit to avoid such animal, such owner shall be deemd guilty of manslaughter in the third degree.

Ib.

SEC. 17. Any person navigating any boat or vessel for gain, who shall wilfully or negligently receive so many passengers, or such a quantity of other lading, that by means thereof such boat or vessel shall sink or overset, and thereby any human being shall be drowned or otherwise killed, shall be deemed guilty of manslaughter in the third degree.

Ib.

SEC. 18. If the captain or any other person having charge of any steamboat used for the conveyance of passengers, or if the engineer or other person having charge of the boiler of such boat, or of any other apparatus for the generation of steam, shall, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, create, or allow to be created, such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking, any person shall be killed, every such captain, engineer or other person, shall be deemed guilty of manslaughter in the third degree.

Ib.

SEC. 19. If any physician, while in a state of intoxication, shall, without a design to effect death, administer any poison, drug or medicine, or do any other act to another person, which shall produce the death of such other, he shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the fourth degree.

SEC. 20. The involuntary killing of another, by any weapon, or by any means neither cruel nor unusual, in the heat of passion, in any cases other than such as are herein declared to be excusable homicide, shall be deemed manslaughter in the fourth degree.

Ib.

SEC. 21. Every other killing of a human being, by the act, procurement or culpable negligence of another, where such killing is not justifiable or excusable, or is not declared in this chapter murder, or manslaughter of some other degree, shall be deemed manslaughter in the fourth degree.

Punishment for manslaughter in the first, second and third degrees.

SEC. 22. Persons convicted of manslaughter in the first, second or third degrees, shall be punished by imprisonment in the state prison, as follows:

Persons convicted of manslaughter in the first degree, for a term not less than seven years;

If convicted of manslaughter, in the second degree, for a term not more than seven, nor less than four years;

If convicted of manslaughter in the third degree, for a term not more than four years, and not less than two years.

Ib., in the fourth degree.

SEC. 23. Every person convicted of manslaughter in the fourth degree, shall be punished by imprisonment in a state prison for two years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Murder in a duel.

SEC. 24. Every person who shall, by previous engagement or appointment, fight a duel within the jurisdiction of this state, and in so doing shall inflict a wound upon any person, whereof the person so injured shall die, shall be deemed guilty of murder, in the second degree.

Second in a duel.

SEC. 25. Every person who shall be the second of either party in such duel as is mentioned in the preceding section, and shall be present when such wound shall be inflicted, whereof death shall ensue, shall be deemed to be an accessory before the fact to the crime of murder, in the second degree.

Duel out of state.

SEC. 26. Every person who shall fight a duel, or act as second or surgeon in the same, by previous arrangement, without this state, shall be incapable of voting or holding any office within this state forever thereafter.

Engaging in duel, challenging, &c.

SEC. 27. Every person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any written or verbal message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the state prison, not more than ten years nor less than three years, and shall be incapable of voting or holding any office of trust or profit under the laws of this state.

Accepting or carrying a challenge, &c.

SEC. 28. Every person who shall accept such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel shall ensue or not, and every person who shall be present at the fighting of a duel with deadly weapons, as an aid, or second, or surgeon, or who shall advise, encourage or promote such duel, shall be punished by imprisonment in the state prison, not more than two years nor less than one year.

Posting another, &c.

SEC. 29. If any person shall post another, or in writing or print shall use any reproachful or contemptuous language, to or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be punished by imprisonment in the state prison, not more than one year, nor less than six months, or by fine, not exceeding five hundred dollars, nor less than one hundred dollars.

Punishment for manslaughter.

SEC. 30. Every person who shall commit the crime of manslaughter shall be punished by imprisonment in the state prison, not more than ten years nor less than one year.

Maiming or disfiguring.

SEC. 31. If any person, with malicious intent, to maim or disfigure, shall cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut or slit or mutilate the nose or lip, or cut off or disable a limb or member of any person, every such offender, and every person privy to such intent, who shall be present aiding in the commission of such offence, shall be punished by imprisonment in the state prison, not more than five years nor less than one year, or by fine, not exceeding one thousand dollars nor less than two hundred dollars.

Assault with intent to murder, &c.

SEC. 32. If any person shall assault another, with intent to murder, or to maim or disfigure his person, in any of the ways mentioned in the next preceding section, he shall be punished by imprisonment in the state prison, not more than five years nor less than one year, or by fine, not exceeding one thousand dollars nor less than one hundred dollars.

Attempt to murder by poison, &c.

SEC. 33. If any person shall attempt to commit the crime of murder, by poisoning, drowning or strangling another person, or by any means not constituting an assault with intent to murder, every such offender shall be punished by imprisonment in the state prison, not more than ten years nor less than one year.

Robbing, being armed, &c.

SEC. 34. If any person shall assault another, and shall feloniously rob, steal and take from his person any money or other property which may be the subject of larceny, such robber being armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if being so armed he shall wound or strike the person robbed, he shall be punished by imprisonment in the state prison, not more than ten years nor less than three years.

Assault with intent to rob, &c., being armed.

SEC. 35. If any person, being armed with a dangerous weapon, shall assault another, with intent to rob or to murder, he shall be punished by imprisonment in the state prison, not more than five years nor less than one year.

Robbing, not being armed.

SEC. 36. If any person shall by force and violence, or by assault and putting in fear, feloniously rob, steal and take from the person of another, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, he shall be punished by imprisonment in the state prison, not more than three years nor less than one year.

Assault to rob, not being armed.

SEC. 37. If any person, not being armed with a dangerous weapon, shall assault another with force and violence, and with intent to rob or to steal, he shall be punished by imprisonment in the state prison, not more than two years nor less than six months.

Attempt to extort money by threats, &c.

SEC. 38. If any person, either verbally or by any written or printed communiciation, maliciously threaten to accuse another of any crime or offence, or shall, by any written or printed communication, maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will, he shall be punished by imprisonment in the state prison not more than one year nor less than six months, or by fine, not exceeding five hundred dollars nor less than one hundred dollars.

Rape.

SEC. 39. If any person shall ravish and carnally know any female of the age of ten years or more, by force and against her will, he shall be punished by imprisonment in the state prison, not more than thirty years nor less than ten years: but if the female shall be proven on the trial to have been, at the time of the offence, a common prostitute, he shall be imprisoned, not more than seven years nor less than one year.

Rape and abuse of child.

SEC. 40. If any person shall unlawfully and carnally know and abuse any female child under the age of ten years, he shall be punished by imprisonment in the state prison for life.

Assault with intent to commit a rape.

SEC. 41. If any person shall assault any female with intent to commit the crime of rape, he shall be punished by imprisonment in the state prison, not more than ten years nor less than one year.

Kidnapping or selling for slave.

SEC. 42. Every person who, without lawful authority, shall forcibly or secretly confine or imprison any other person within this state, against his will, or shall forcibly carry or send such person out of this state against his will, or shall forcibly seize and confine, or shall inveigle or kidnap any other person, with intent either to cause such person to be secretly confined or imprisoned in this state against his will, or to cause such person to be sent out of this state, against his will, or to be sold as a slave, or in any way held to service against his will; and every person who shall sell, or in any manner transfer, for any term, the service or labor of any negro, mulatto or other person of color, who shall have been unlawfully seized, taken, inveigled or kidnapped from this state, to any state, place or country, shall be punished by imprisonment in the state prison not more than two years nor less than one year, or by fine, not exceeding one thousand dollars nor less than five hundred dollars.

Kidnapping, &c, where to be prosecuted.

SEC. 43. Every offence mentioned in the next preceding section, may be tried either in the county in which the same may have been committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services shall be so sold or transferred, shall have been taken, confined, held, carried or brought, and upon the trial of any such offence, the consent thereto of the person so taken, inveigled, kidnapped or confined, shall not be a defence unless it shall be made satisfactorily to appear to the jury, that such consent was not obtained by fraud, nor extorted by duress or by threats.

Poisoning food, &c.

SEC. 44. If any person shall mingle any poison with any food, drink or medicine, with intent to kill or injure any other person, or shall willfully poison any spring, well or reservoir of water with such intent, he shall be punished by imprisonment in the state prison not more than ten years, nor less than one year.

Assault with intent to commit burglary, &c., or other felony.

SEC. 45. If any person shall assault another with intent to commit any burglary, robbery, rape, manslaughter, mayhem or any felony, the punishment of which assault is not herein prescribed, he shall be punished by imprisonment in the state prison not more than three years nor less than six months, or by fine not exceeding one thousand dollars nor less than one hundred dollars.

CHAPTER 134.

OF OFFENCES AGAINST PROPERTY.

Burning dwelling house in night by which life of person destroyed.

SECTION 1. Every person who shall willfully and maliciously burn in the night time the dwelling house of another, whereby the life of any person shall be destroyed, or shall in the night time, willfully and maliciously set fire to any other building owned by himself or another, by the burning whereof such dwelling house shall be burnt in the night time, whereby the life of any person shall be destroyed, shall suffer the same punishment as provided for the crime of murder in the second degree ; but if the life of no person shall have been destroyed, he shall be punished by imprisonment in the state prison not more than fourteen years nor less than seven years; and if at the time of committing the offence there was no person lawfully in the dwelling house so burnt, he shall be punished by imprisonment in the state prison not more than ten years nor less than three years.

When life of person not destroyed.

Burning house in day time

SEC. 2. Every person who shall willfully and maliciously burn in the day time the dwelling house of another, or any building adjoining such dwelling house, and shall willfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling house shall be burnt in the day time, or shall in the day time willfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling house shall be burnt in the night time, shall be punished by imprisonment in the state prison not more than fifteen years, nor less than five years.

Burning church, court-house, &c. at night.

SEC. 3. Every person who shall willfully and maliciously burn in the night time any meeting-house, church, court-house, town-house, college, academy, jail or other building erected for public uses, or any ship, steam-boat or other vessel, or any banking-house, warehouse, store, manufactory or mill of another, or any barn, stable, shop or office of another, within the curtilage of any dwelling house or any other building, by the burning whereof any building mentioned in this section shall be burnt in the night time, shall be punished by imprisonment in the state prison not more than fifteen years, nor less than five years.

Ib., in day time.

SEC. 4. Every person who shall willfully and maliciously burn in the day time any building mentioned in the next preceding section, the punishment for which if burnt in the night time, would be imprisonment in the state prison not more than fifteen years, nor less than five years, shall be punished by imprisonment in the state prison not more than eight years nor less than four years.

Ib., day or night, certain buildings

SEC. 5. Every person who shall wilfully and maliciously burn, either in the night time or day time, any banking-house, warehouse, store, manufactory, mill, barn, stable, shop, office, out-house or other building whatsoever, of another, other than is mentioned in the third section of this chapter, or any bridge, lock, dam or flume, shall be punished by imprisonment in the state prison not more than eight years nor less than four years.

Burning boards, timber, &c.

SEC. 6. Every person who shall wilfully and maliciously burn any pile or parcel of boards, timber or other lumber, or any stack of hay, grain, or other vegetable product, or any vegetable product severed from the soil but not stacked, or any standing grain, grass, or other standing product of the soil, shall be punished by imprisonment in the state prison not more than two years nor less than six months.

Married women liable.

SEC. 7. The preceding sections shall severally extend to a married woman who may commit either of the offences therein described, though the property burnt or set fire to may belong partly or wholly to her husband.

Burning property to injure insurers.

SEC. 8. Every person who shall wilfully burn any building or any goods, wares, merchandise or other chattels, which shall be at the time insured against loss or damage by fire, with intent to injure the insurer, whether such person be the owner of the property burnt or not, shall be punished by imprisonment in the state prison not more than ten years nor less than three years.

Burglary, being armed or making assault.

SEC. 9. Every person who shall break and enter any dwelling house in the night time, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, or after having entered with such intent shall break any such dwelling-house in the night time, any person being then lawfully therein, and the offender being armed with a dangerous weapon at the time of such breaking or entering, or so arming himself in such house, or making an actual assault on any person lawfully therein, shall be punished by imprisonment in the state prison not more than twelve years nor less than four years.

Burglary, not being armed nor assaulting.

SEC. 10. Every person who shall break and enter any dwelling-house in the night time with such intent as is mentioned in the next preceding section, or who having entered with such intent, shall break such dwelling-house in the night time, the offender not being armed nor arming himself in such house with a dangerous weapon, nor making an assault upon any person then being lawfully therein, shall be punished by imprisonment in the state prison not more than five years, nor less than two years.

Breaking into office, &c., at night.

SEC. 11. Every person who shall break and enter in the night time any office, shop or ware-house not adjoining to or occupied with a dwelling-house, or any ship, steam-boat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or any other felony, shall be punished by imprisonment in the state prison not more than three years, nor less than one year.

44

Entering house at night, &c., without breaking &c.

SEC. 12. Every person who shall enter in the night time without breaking, or shall break and enter in the day time, any dwelling-house or any out-house thereto adjoining and occupied therewith, or any office, shop or ware-house, or any ship, steamboat, or vessel, within the body of any county, with intent to commit the crime of murder, rape or robbery, larceny or other felony, shall be punished by imprisonment in the state prison not more than two years, nor less than six months.

Larceny in dwelling house, &c.

SEC. 13. Every person who shall commit the crime of larceny in any dwelling-house, office, shop, bank or ware-house, ship, steam-boat or vessel, or shall break and enter in the night time or day time, any meeting-house, church, court-house, town-house, college, academy or other building erected for public use, and steal therein, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year nor less than three months, or by fine not exceeding five hundred dollars.

Stealing from the person.

SEC. 14. Every person who shall commit the offence of larceny by stealing from the person of another, shall be punished by imprisonment in the state prison not more than four years nor less than two years, or by imprisonment in the county jail not more than two years nor less than three months, or by fine not exceeding five hundred dollars.

Simple larceny exceeding $100 in value.

SEC. 15. Every person who shall commit the crime of larceny by stealing of the property of another, any money, goods or chattels, or any bank note, bond, promissory note, bill of exchange or other bill, order or certificate, or any book of accounts, for or concerning money or goods due or to become due, or to be delivered, or any deed or writing containing a conveyance of land or any other valuable contract in force, or any receipt, release or defeasance, or any writ, process or public record, if the property stolen shall exceed the value of one hundred dollars, shall be punished by imprisonment in the state prison not more than three years nor less than one year; and if the property stolen shall not exceed the value of one hundred dollars, he shall be punished by imprisonment in the county jail not more than two years nor less than three months, or by fine not exceeding three hundred dollars.

Ib., less than $100.

Jurisdiction of justices in larcenies.

SEC. 16 Every justice of the peace shall have jurisdiction concurrent with the circuit court of all the larcenies mentioned in the fifteenth section of this chapter, when the money or other property stolen shall not be alleged to exceed the value of twenty dollars, and of all other larcenies whatever, when the money or other property stolen shall not be alleged to exceed the value of ten dollars; in all which cases the punishment shall be by fine not exceeding fifty dollars, or by imprisonment in the county jail for the term of three months; saving to every person who shall be convicted before the justice the right to appeal as in other cases.

Buying &c. stolen goods.

SEC. 17. Every person who shall buy, receive or aid in the concealment of stolen money, goods or property, knowing the same to have been stolen, shall be punished by imprisonment in the state prison not more than four years nor less than one year, or by imprisonment in the county jail not more than two years nor less than three months, or by fine not exceeding five hundred dollars.

Jurisdiction of justice in case of buying, &c. stolen goods.

Sec. 18. Every justice of the peace shall have jurisdiction concurrent with the circuit court, as before provided, of all offences of buying, receiving or aiding in the concealment of stolen goods or other property, in all cases in which they would have had jurisdiction of a larceny of the same goods or other property; and the punishment of buying, receiving or aiding in the concealment of such goods or other property, shall be the same as in the case of a larceny of the same goods or other property, with the same right of appeal on conviction.

Receivers, &c. may be tried before thief convicted.

Sec. 19. In any prosecution for the offence of buying, receiving or aiding in the concealment of stolen money or other property known to have been stolen, it shall not be necessary to aver nor on the trial thereof to prove that the person who stole such property has been convicted.

Officer arresting to secure goods.

Sec. 20. The officer who shall arrest any person charged as principal or accessary in any robbery or larceny, shall secure the property alleged to be stolen and shall be answerable for the same, and he shall annex a schedule thereof to his return of the warrant, and upon conviction of the offender the stolen property shall be restored to the owner.

Prosecutor and officer when and how paid.

Sec. 21. Upon any conviction of burglary, robbery or larceny, the court may order a meet recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer.

Embezzlement by officers, &c., of banks.

Sec. 22. If any cashier or other officer, or any agent, clerk or servant of any incorporated bank, shall embezzle or fraudulently convert to his own use, or shall fraudulently take or secrete, with intent to convert to his own use, any bullion, money, note, bill, obligation or security, or any other effects or property belonging to and in possession of such bank, or belonging to any person and deposited therein, he shall be deemed to have committed the crime of larceny in such bank.

Ib., by officer, agent, clerk, &c.

Sec. 23. If any officer, agent, clerk or servant of any incorporated company, or if any clerk, agent or servant of any private person or of any co-partnership, except apprentices and other persons under the age of sixteen years, shall embezzle or fraudulently convert to his own use, or shall take or secrete with intent to embezzle and convert to his own use, without consent of his employer or master, any money or property of another, which shall have come to his possession, or shall be under his care by virtue of such employment, he shall be deemed by so doing to have committed the crime of larceny.

Ib. by carrier and others.

Sec. 24. If any carrier or other person to whom any money, goods or other property which may be the subject of larceny, shall have been delivered to be carried for hire, or if any other person who shall be entrusted with such property, shall embezzle or fraudulently convert to his own use, or shall secrete with intent to embezzle, or fraudulently convert to his own use, any such money, goods or property, either in the mass as the same were delivered, or otherwise, and before delivery of such money, goods or property, at the places where or to the persons to whom they were to be delivered, he shall be deemed to have committed the crime of larceny.

Embezzlement or fraudulently selling by warehousemen, &c.

SEC. 25. Any warehouseman, storage, forwarding, or commission merchant or miller, or his or their agents, clerks or servants, who shall embezzle, or fraudulently convert to his or their own use, or fraudulently sell or otherwise dispose of for his or their own gain, profit or advantage, without the consent of the owner thereof, any grain, flour, pork, beef, wool or other goods, wares or merchandize, which shall have been received by such warehouseman, miller, or storage, forwarding or commission merchant, to be stored for hire or for any other purpose, shall be deemed to have committed the crime of larceny.

Embezzlement or loaning, &c., of public moneys by officers and others.

SEC. 26. If any person having in his possession any money belonging to this state, or any county, town, city or other municipal corporation, or in which this state, or any county, town, city or other municipal corporation has any interest; or if any collector or treasurer of any town or county, or incorporated city, town or village, or the treasurer or other disbursing officer of the state, or any other person holding an office under any law of this state, or any officer of any incorporated company, who now is, by virtue of his office, or shall hereafter be, intrusted with the collection, safe keeping, receipt, transfer or disbursement of any tax, revenue, fine, or other money, shall convert to his own use, in any way or manner whatever, any part thereof, or shall loan, with or without interest, any portion of the money intrusted to him as aforesaid, or who shall wilfully neglect or refuse to pay over the same, or any part thereof, according to the provisions of law, so that he shall not be able to meet the demands of any person lawfully demanding the same, whether such demand be made before or after the expiration of his office, he shall be deemed and adjudged to be guilty of an embezzlement.

Punishment therefor.

SEC. 27. Any person who shall be guilty of embezzling any money prohibited by this or the last preceding section, not exceeding in amount the sum of one hundred dollars, shall, upon conviction thereof, be punished by imprisonment in the county jail, not more than twelve months nor less than three months; and any person who shall be convicted of embezzling a greater sum than one hundred dollars, shall be punished by imprisonment, in the state prison, not more than three years, nor less than one year, and by a fine, in each case, of twice the amount so embezzled; and if the court cannot determine, from the verdict of the jury, or otherwise, the amount of the sum embezzled, they shall impose such fine as, in their discretion, shall be adequate and corresponding, as nearly as may be, with the penalty imposed by this section; and every refusal, by an officer, to pay any sum lawfully demanded, shall be deemed an embezzlement of the sum so demanded.

Refusal to pay money when demanded.

Who deemed an accessory.

SEC. 28. Any person, demanding of any officer any sum of money, which he may be entitled to demand and receive, who shall be unable to obtain the same, by reason of the money having been embezzled as aforesaid, if he shall neglect or refuse, for thirty days after making such demand, to make complaint against such officer, shall be deemed an accessory, and, upon conviction thereof, shall be fined in a sum not exceeding one hundred dollars.

When officer need not pay in specie, &c.

Sec. 29. The refusal of any officer to pay any demand in specie, where the sum so demanded was actually received by such officer, in good faith, in checks, drafts, certificates of deposit, or currency, which may have depreciated in value, provided payment be tendered in the checks, drafts, certificates of deposite, or currency, received by such officer, shall not be construed to be an embezzlement, according to the intent and meaning of the twenty-sixth and twenty-seventh sections of this chapter.

Officers, &c., to pay over same money received, &c.

When and where justices, &c. to pay moneys collected for fines.

Sec. 30. Every officer, or other person mentioned in the twenty-sixth section of this chapter, shall pay over the same money that he may have received in the discharge of his duties, and shall not set up any account as a set-off against any money so received ; and all justices of the peace, clerks of the county, sheriffs, and other officers, shall pay into the respective treasuries all the money collected on fines, within thirty days after said moneys may be collected.

Making, &c, false receipt, &c, by warehousemen, &c.

Sec. 31. If any warehouseman, miller, or storage, forwarding or commission merchant, or his or their agents, clerks, or servants, shall wilfully and fraudulently make or utter any receipt, or other written evidence of the delivery into any warehouse, mill, store or other building belonging to him, them, or either of them, or his or their employers, of any grain, flour, pork, beef, wool or other goods, wares or merchandize, which shall not have been so received or delivered into such mill, warehouse, store or other building, previous to the making and uttering of such receipt or other written evidence thereof, shall be punished by imprisonment in the state prison not more than two years nor less than one year.

Falsely personating another.

Sec. 32. Every person who shall falsely personate or represent another, and in such assumed character shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed by so doing to have committed the crime of larceny.

Obtaining property by false pretences.

Sec. 33. If any person shall designedly, by any false pretence or by any privy or false token, and with intent to defraud, obtain from any other person any money or goods, wares, merchandize or other property, or shall obtain with such intent the signature of any person to any written instrument, the false making whereof would be punishable as forgery, he shall be punished by imprisonment in the state prison not more than five years nor less than one year, or by fine not exceeding five hundred dollars nor less than fifty dollars.

Gross frauds, how punished.

Sec. 34. Every person who shall be convicted of any gross fraud or cheat at common law, shall be punished by imprisonment in the state prison not more than four years nor less than one year, or by fine not exceeding one thousand dollars nor less than fifty dollars.

Casting away, burning &c., vessels, &c.

Sec. 35. If any person shall wilfully cast away, burn, sink, or otherwise destroy any ship, steam-boat or vessel within the body of any county, with intent to injure or defraud any owner of such vessel, steam-boat or ship, or the owner of any property laden on board the same, or any insurer of such vessel or property, or of any part thereof, he shall be punished by imprisonment in the state prison not more than ten years nor less than three years.

Lading or filing out vessels, &c. with intent to destroy.

SEC. 36. If any person shall lade, equip or fit out, or assist in lading, equipping and fitting out any steam-boat, ship or vessel, with the intent that the same shall be wilfully cast away, burnt, sunk or otherwise destroyed, to injure or defraud any owner or insurer of such vessel, or of any property laden on board the same, he shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by fine not exceeding five thousand dollars nor less than one hundred dollars.

Making out or exhibiting false invoice of cargo.

SEC. 37. If the owner of any ship, steam-boat or vessel, or any property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of any such ship, steam-boat or vessel, shall make out or exhibit, or cause to be made out or exhibited any false or fraudulent invoice, bill of lading, bill of parcels or other false estimates of any goods or property laden or pretended to be laden on board such vessel, with intent to injure or defraud any insurer of such vessel or property, or of any part thereof, he shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by fine not more than five hundred dollars nor less than one hundred dollars.

Making or procuring false protest, &c

SEC. 38. If any master or other officer or mariner of any ship, steam-boat or vessel, shall make or cause to be made, or shall swear, to any false affidavit or protest, or if any owner or other person concerned in such vessel, or in the goods or property laden on board such vessel, shall procure any such false affidavit or protest to be made, or shall exhibit the same with intent to injure or deceive or defraud any insurer of such ship, steam-boat or vessel, or of the goods or property laden on board the same, or any other person, he shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by fine not exceeding one thousand dollars nor less than one hundred dollars.

Maliciously killing, maiming, &c. cattle, or injuring personal property.

SEC. 39. Every person who shall wilfully and maliciously kill, maim or disfigure any horses, cattle or other beasts of another person, or shall wilfully and maliciously administer poison to any such beasts, or expose any poisonous substance with intent that the same may be taken or swallowed by them, or shall wilfully and maliciously destroy or injure the personal property of another, in any manner or by any means not particularly mentioned or described in this chapter, shall be punished by imprisonment in the county jail not more than two years nor less than three months, or by fine not exceeding five hundred dollars nor less than fifty dollars.

Selling lands without title.

SEC. 40. If any person shall falsely and fraudulently represent that he is the owner of any parcel or tract of land to which he has no title, and shall execute any deed of the same with intent to defraud any person whatever, he shall be punished by imprisonment in the state prison not more than two years nor less than six months.

Malicious injury to dams, &c.

SEC. 41. Every person who shall wilfully and maliciously break down, injure, remove or destroy any dam, reservoir, canal or trench, or any gate, flume, flash boards or other appurtenances thereof, or of the wheels, mill-gear or machinery of any mill, or shall wilfully or wantonly, and without color of right, draw off the water contained in any mill-pond, reservoir, canal or trench, shall be punished by imprisonment in the state prison not more than two years nor less than six months, or by fine not exceeding four hundred dollars nor less than fifty dollars.

Ib., to bridges, roads, turnpike gates, &c.

Sec. 42. Every person who shall wilfully or maliciously break down, injure, remove or destroy any public or toll bridge, or rail-road, or plank-road, or telegraph posts or wires, or any turnpike or plank-road gate, or any lock, culvert or embankment of any canal, or shall wilfully or maliciously make any aperture or breach in any such embankment, with intent to destroy or injure the same, shall be punished by imprisonment in the state prison not more than three years nor less than six months, or by fine not exceeding six hundred dollars nor less than fifty dollars.

Ib., to fruit and ornamental trees, fences, glass, produce, &c.

Sec. 43. Every person who shall wilfully and maliciously, or wantonly and without cause, cut down and destroy, or by girdling, lopping or otherwise, shall injure any fruit tree or any other trees, not his own, standing or growing, for shade, ornament or other useful purposes, or shall maliciously or wantonly break the glass or any part of it in any building not his own, or shall maliciously break down any fence belonging to or enclosing land not his own, or shall maliciously throw down or open any bars, gate or fence and leave the same down, or open, or shall maliciously and injuriously sever from the freehold of another any produce thereof, or anything attached thereto, shall be punished by imprisonment in the county jail not more than one year nor less than three months, or by fine not exceeding two hundred dollars.

Ib., to monuments, guide boards, buildings, sign boards, &c.

Sec. 44. Every person who shall wilfully and maliciously break down, injure, remove or destroy any monument erected for the purpose of designating the boundaries of any town or of any tract or lot of land, or any tree marked for that purpose, or shall so break down, injure, remove or destroy any mile stone, mile board or guide board, erected upon any highway or other public way, turnpike or rail-road, or plank-road, or shall wilfully or maliciously deface or alter the inscription on any such stone or board, or shall wilfully or maliciously mar or deface any building or any sign-board, or shall extinguish any lamp, or break, destroy or remove any lamp or lamp-post, or any railing or posts, erected on any bridge, side-walk, street, highway, court or passage, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than six months.

Trespassing in gardens, orchards, &c.

Sec. 45. Every person who shall wilfully commit any trespass by entering upon the garden, orchard or other improved land of another, without permission of the owner thereof, and with intent to cut, take, carry away, destroy or injure the trees, grain, grass, hay, fruit or vegetables there growing or being, shall be punished by fine not exceeding fifteen dollars nor less than three dollars.

Jurisdiction of justices, &c.

Sec. 46. Every justice of the peace shall have concurrent jurisdiction in his own county with the circuit court, of all offences mentioned in the three next preceding sections of this chapter, when the value of the trees, fruit, grain or other property injured, destroyed, taken or carried away, or the injury occasioned by the trespass shall not be alleged to exceed the sum of one hundred dollars, and in any such case the punishment shall be by fine, not exceeding fifty dollars nor less than five dollars.

Injuring &c. trees on, or taking away timber, wood, mineral, &c., from school lands, &c.

SEC. 47. Any person who shall wilfully cut down or destroy, or by girdling or otherwise, shall injure any tree growing or standing upon any lands set apart for university and school purposes, or either, and belonging to this state, or upon any other lands belonging to this state, or who shall wilfully cut or take, carry or haul away from any such lands, any timber or wood previously cut or severed from said lands, or shall dig or carry away any mineral, earth or stone in or upon any of said lands, shall be held guilty of a misdemeanor, and upon conviction of any of said offences, shall be punished by imprisonment in the county jail of the proper county, not more than one year, nor less than three months, or by fine, not exceeding five hundred dollars.

Jurisdiction of justices, &c.

SEC. 48. Any justice of the peace shall have concurrent jurisdiction in his own county with the circuit court, of any offence mentioned in the preceding section, where the value of the trees, wood, timber, mineral, earth or stone shall be alleged not to exceed the sum of one hundred dollars, and in such case the punishment shall be by fine, not exceeding one hundred dollars, nor less than ten dollars.

Duty of town superintendent and district attorney in case of trespasses on public lands.

SEC. 49. It is hereby made the special duty of the superintendent of schools in each town, who may have knowledge of, or who may receive information of any offence mentioned in the two next preceding sections of this chapter, to forthwith inform the district attorney of the county in which he shall reside of the trespass committed, of the name of the trespasser or trespassers, and of the name of the witness or witnesses in the case; and the district attorney shall immediately proceed to bring such tresspasser or trespassers before the proper tribunal for trial, and he shall prosecute them in the name of the state.

Wilful injury to trees, and carrying away timber, wood, mineral, &c., from private property.

SEC. 50. Any person who shall wilfully and without authority, cut down or destroy, or shall injure by girdling, or otherwise, any tree growing or standing upon the private property of any individual, or cut any timber or wood upon such property, or take, carry or haul away therefrom any timber or wood previously cut or severed from the freehold, or who shall wilfully and without authority dig or carry away any mineral, earth or stone from any such land, shall be held guilty of a misdemeanor, and upon conviction of any of said offences, shall be punished by imprisonment in the county jail of the proper county, not more than one year, or by fine not exceeding five hundred dollars, nor less than five dollars.

Jurisdiction of justices.

SEC. 51. Any justice of the peace shall have concurrent jurisdiction in his own county with the circuit court, of any offence in the preceding section specified, when the value of the trees, wood, timber, mineral, earth, or stone shall be alleged not to exceed the sum of one hundred dollars, and in such case the punishment shall be by fine, not less than five nor more than one hundred dollars; and if any person, on conviction of such offence, shall refuse or neglect, for the space of ten days, to pay such fine, it shall be lawful for the justice before whom the conviction was had, to commit such person to the jail of the proper county, for a period not less than ten nor more than thirty days.

Firing woods and prairies, &c.

SEC. 52. If any person shall wilfully and maliciously set on fire, or cause to be set on fire, any woods, or prairie, or other grounds, other than his own, or shall intentionally, or by neglect, permit the fire to pass his own prairie, or grounds, to the injury of any other person or persons, every person so offending shall, on conviction thereof, for every such offence, be fined in a sum not exceeding five hundred dollars, nor less than ten dollars.

CHAPTER 135.

OF FORGERY AND COUNTEREITING.

Forgery of records, deeds, contracts, &c.

SECTION 1. Every person who shall falsely make, alter, forge or counterfeit any public record, or any certificate, return or attestation of any clerk of a court, public register, notary public, justice of the peace, or any other public officer, in relation to any matter wherein such certificate, return or attestation may be received as legal proof, or any charter, deed, will, testament, bond or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, or any order, acquittance or discharge for money or other property, or any acceptance of a bill of exchange, indorsement or assignment of a bill of exchange or promissory note, or any accountable receipt for money, goods or other property, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison, not more than five years nor less than two years, or by imprisonment in the county jail not more than two years nor less than one year.

Uttering forged records or contracts.

SEC. 2. Every person who shall utter and publish as true any false, forged, or altered record, deed, instrument or other writing mentioned in the next preceding section, knowing the same to be false, forged or altered with intent to injure or defraud as aforesaid, shall be punished by imprisonment in the state prison not more than five years nor less than one year.

Forging notes, &c., issued by state.

SEC. 3. Every person who shall falsely make, alter, forge or counterfeit any note, certificate or other bill of credit, issued by any commissioner or other officer authorized to issue the same for any debt of this state, with intent to injure or defraud as aforesaid, shall be punished by imprisonment in the state prison not more than seven years nor less than three years.

Forging bank notes, &c.

SEC. 4. Every person who shall make, alter, forge or counterfeit any bank bill, promissory note, draft or other evidence of debt, issued by any corporation or company duly authorized for that purpose by the laws of the United States, of any state of the United States, or of this state, or of any territory of the United States, or of any other state, government or country, with intent to injure or defraud, shall be punished by imprisonment in the state prison not more than five years nor less than one year.

Having counterfeit bills with intent to pass.

SEC. 5. Every person who shall have in his possession any forged, counterfeit or altered bank bill, promissory note, draft or other evidence of debt issued or purporting to have been issued as is mentioned in the next preceding section, with intent to utter the same as true or false, knowing the same to be so forged, counterfeited or altered as aforesaid, shall be punished by imprisonment in the state prison not more than five years nor less than one year.

Passing counterfeit bills, &c.

SEC. 6. Every person who shall utter or pass, or tender in payment as true, any false, altered, forged, or counterfeit note, certificate or bill of credit for any debt of this state, or bank bill promissory note, draft or other evidence of debt issued or purporting to have been issued as is mentioned in the fourth section of this chapter, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud, shall be punished by imprisonment in the state prison not more than five years nor less than one year.

Making or having tools, &c., for counterfeiting with intent, &c.

SEC. 7. Every person who shall engrave, make or mend, or begin to engrave, make or mend any plate, block, press or other tool, instrument or implement, or shall make or provide any paper or other materials adapted and designed for the forging or making any false and counterfeit note, certificate or other bill of credit in the similitude of the notes, certificates or bills of credit, issued by lawful authority for any debt of this state, or any false or counterfeit note or bill in the similitude of the notes or bills issued by any bank or banking company established in this state, or within the United States, or any territory thereof, or within any other government or country, and every person who shall have in his possession any such plate or block engraved in any part, or any press or other tool, instrument or implement, paper or other material, adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used in forging or making any such false and forged certificates, bills or notes, shall be punished by imprisonment in the state prison not more than five years nor less than one year.

Testimony of president, &c., of banks, when dispensed with.

SEC. 8. In all prosecutions for forging or counterfeiting any notes or bills of the banks before mentioned, or for uttering, publishing or tendering in payment as true, any forged or counterfeit bank bills or notes, or for being possessed thereof with intent to utter and pass them as true, the testimony of the president and cashier of such banks may be dispensed with, if their place of residence shall be out of this state, or more than forty miles from the place of trial, and the testimony of any person acquainted with the signature of the president or cashier of such banks, or who has knowledge of the difference in the appearance of the true and counterfeit bills or notes thereof may be admitted, to prove that any such bills or notes are counterfeit.

Sworn certificate of certain officers made evidence.

SEC. 9. In all prosecutions for forging or counterfeiting any note, certificate, bill of credit or other security issued on behalf of the United States or on behalf of any state or territory, or for uttering, publishing or tendering in payment as true any such forged or counterfeit note, certificate, bill of credit or security, or for being possessed thereof with intent to utter and pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United states, or of the secretary or treasurer of any state or territory on whose behalf such note, certificate, bill of credit or security purports to have been issued, shall be admitted as evidence for the purpose of proving the same to be forged or counterfeit.

Fraudulently connecting parts of instruments.

SEC. 10. If any person shall fraudulently connect together different parts of several bank notes or other genuine instruments, in such manner as to produce an additional note or instrument with intent to pass all of them as genuine, the same shall be deemed a forgery in like manner as if each of them had been falsely made or forged.

Affixing fictitious signatures.

SEC. 11. If any fictitious or pretended signature, purporting to be the signature of an officer or agent of any corporation, shall be fraudulently affixed to any instrument or writing, purporting to be a note, draft or other evidence of debt issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, nor such corporation ever have existed.

Intent to defraud; statement and proof.

SEC. 12. In any case where the intent to defraud is necessary to constitute the offence of forgery or any other offence that may be prosecuted, it shall be sufficient to allege in the indictment, an intent to defraud, without naming therein the particular person or body corporate, intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, territory, county, city, town or village, or any body corporate, or any public officer in his official capacity, or any copartnership or member thereof, or any particular person.

Counterfeiting coin, or having ten pieces, &c.

SEC. 13. Every person who shall counterfeit any gold or silver coin, current by law or usage within this state, and every person who shall have in his possession at the same time ten or more pieces of false money or coin, counterfeited in the similitude of any gold or silver coin, current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, shall be punished by imprisonment in the state prison, not more than five years nor less than one year.

Having less than ten pieces, &c.

SEC. 14. Every person who shall have in his possession any number of pieces less than ten of the counterfeit coin mentioned in the next preceding section, knowing the same to be counterfeit, with intent to utter or pass the same as true, and any person who shall utter, pass or tender in payment as true, any such counterfeit coin, knowing the same to be false and counterfeit, with intent to injure or defraud, shall be punished by imprisonment in the state prison, not more than three years nor less than one year.

Making &c., tools for coining, &c.

SEC. 15. Every person who shall cast, stamp, engrave, make or mend, or shall knowingly have in his possession any mould, pattern, die, puncheon, engine, press, or other tool or instrument, adapted and designed for coining or making any counterfeit coin in the similitude of any gold or silver coin, current by law or usage in this state, with intent to use the same, or cause or permit the same to be used or employed in coining or making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison, not more than five years nor less than two years.

Punishment on conviction of second offence. SEC. 16. Any person who may be convicted of a second offence shall be punished by imprisonment not exceeding twice the term mentioned in the section under which he may be indicted and tried.

CHAPTER 136.

OF OFFENCES AGAINST PUBLIC JUSTICE.

Perjury, punishment of. SEC. 1. Every person being lawfully required to depose the truth in any proceedings in a court of justice, who shall commit perjury, shall be punished if such perjury was committed on the trial of an indictment for a capital crime, by imprisonment in the state prison not more than fifteen years nor less than three years; and if committed in any other case, by imprisonment in the state prison not more than five years nor less than two years.

What deemed perjury. SEC. 2. If any person of whom an oath shall be required by law, shall wilfully swear falsely in regard to any matter or thing respecting which such oath is required, such person shall be deemed guilty of perjury.

Subornation of perjury. SEC. 3. Every person who shall be guilty of subornation of perjury by procuring another person to commit the crime of perjury as aforesaid, shall be punished in the same manner as for the crime of perjury.

Inciting to commit perjury. SEC. 4. If any person shall endeavor to procure or incite any other person to commit the crime of perjury, though no perjury be committed, he shall be punished by imprisonment in the state prison, not more than three years nor less than one year.

Disqualification on conviction. SEC. 5. The oath of any person convicted of perjury, subornation of perjury, or an endeavor to incite or procure any other person to commit such perjury, shall not be received in any proceedings in a court of justice, except in an affidavit in his own cause, or as a poor debtor, unless the judgment given against such person shall be reversed, or unless he shall be pardoned.

Proceedings when perjury suspected by court. SEC. 6. Whenever it shall appear to any court of record that any witness or party who has been legally sworn and examined, or has made an affidavit in any proceedings in a court of justice, has testified in such a manner as to induce a reasonable presumption that he has been guilty of perjury therein, the court may take a recognizance with sureties for his appearing to answer to an indictment for perjury, and thereupon the witness to establish such perjury may be bound over to the proper court, and notice of the proceedings shall forthwith be given to the district attorney.

Copies of papers, &c., may be taken. SEC. 7. If in any proceeding in a court of justice in which perjury shall be reasonably presumed as aforesaid, any papers, books or documents shall have been produced which shall be deemed necessary to be used in any prosecution for such perjury, the court may order a certified copy of such books, papers or documents to be taken to be used in such prosecution, and such certified copy shall be used in such prosecution in the same manner as the original might have been.

Giving or offering bribes to officers.

Sec. 8. Every person who shall corruptly give, offer or promise to any executive, judicial or legislative officer, after his election or appointment, and either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment in any matter, question, course or proceeding which may then be pending, or may by law come or be brought before him in his official capacity, shall be punished by imprisonment in the state prison, not more than three years nor less than one year, or by fine not exceeding five hundred dollars, nor less than one hundred dollars.

Accepting bribes by officers.

Sec. 9. Every executive, legislative or judicial officer who shall corruptly accept any gift or gratuity, or any promise to make any gift, or do any act beneficial to such officer, under an agreement, or with an understanding that his vote, opinion or judgment shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, shall be punished by imprisonment in the state prison, not more than four years nor less than two years, or by fine, not exceeding six hundred dollars nor less than two hundred dollars.

Corrupting jurors, &c.

Sec. 10. Every person who shall corrupt or attempt to corrupt any court commissioner, juror, arbitrator, umpire or referee, by giving, offering or promising any gift or gratuity whatever, with intent to bias his opinion or influence the decision of such court commissioner, juror, arbitrator, umpire or referee, in relation to any cause or matter which may be pending in the court or before an inquest, or for the decision of which such arbitrator, umpire or referee shall have been appointed, shall be punished by imprisonment in the state prison, not more than three years nor less than one year, or by fine not exceeding five hundred dollars nor less than one hundred dollars.

Accepting bribes by jurors, &c.

Sec. 11. If any person summoned as a juror, chosen or appointed as an arbitrator, umpire or referee, or if any court commissioner shall corruptly take any thing to give his verdict, award or report, or shall corruptly receive any gift or gratuity whatever, from a party to any suit, cause or proceeding, for the trial or decision of which such juror shall have been summoned, or for the hearing or determining of which such court commissioner, arbitrator, umpire or referee shall have been chosen or appointed, he shall be punished by imprisonment in the state prison, not more than three years nor less than one year, or by fine not exceeding six hundred dollars nor less than two hundred dollars.

Attempts to aid escapes from prison, &c.

Sec. 12. Every person who shall convey into any jail, house of correction, house of reformation or other like place of confinement, any disguise, or any instrument, tool, weapon or other thing, adapted or useful to aid any prisoner to make his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or shall by any means whatever, aid or assist any such prisoner in his endeavor to escape therefrom, whether such escape be attempted or effected or not, and every person who forcibly rescues any prisoner held in custody upon any conviction or charge of an offence, shall be punished by imprisonment in the state prison not more than four years nor less than two years; or if the person whose escape or rescue was effected or intended, was charged with an offence not capital nor punishable by imprisonment in the state prison, then the punishment for the offence mentioned in this section, shall be by imprisonment in the county jail, not more than one year, or by fine not exceeding two hundred dollars.

Aiding an escape from officer.

SEC. 13. Every person who shall aid or assist any prisoner in escaping or in attempting to escape from any officer or person, who shall have the lawful custody of such prisoner, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars.

Suffering a voluntary escape from prison.

SEC. 14. If any jailer or other officer, shall voluntarily suffer any prisoner in his custody upon conviction of any criminal charge to escape, he shall suffer, unless the prisoner was charged with, or convicted of a capital offence, the like punishment and penalties as the prisoner so suffered to escape was sentenced to, or would be liable to suffer upon conviction for the crime or offence wherewith he stood charged; and if the prisoner was charged with or convicted of a capital offence, he shall be punished by imprisonment in the state prison, not more than thirty years nor less than five years.

Ib., negligent escape, and refusing to receive prisoner.

SEC. 15. If any jailer or other officer, shall through negligence suffer any prisoner in his custody upon conviction or upon any criminal charge, to escape, or shall wilfully refuse to receive into his custody any prisoner lawfully committed thereto, on any criminal charge or conviction, or on any lawful process whatever, he shall be punished by imprisonment in the county jail not more than two years, or by fine not exceeding three hundred dollars.

Refusing to arrest, and suffering escape.

SEC. 16. If any officer authorized to serve process, shall wilfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person convicted or charged with an offence, or shall wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars.

Refusing to aid officers.

SEC. 17. If any person being required in the name of the State of Wisconsin, by any sheriff, deputy sheriff, coroner or constable, shall neglect or refuse to assist them in the execution of their office, in any criminal case or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case of escape or rescue of persons arrested upon civil process, he shall be punished by fine not exceeding one hundred dollars.

Refusing to aid justices.

SEC. 18. If any justice of the peace upon view of any breach of the peace, or any other offence proper for his cognizance, shall require any person to apprehend and bring before him the offender, every person so required who shall refuse or neglect to obey such justice, shall be punished in the same manner as is provided in the next preceding section, for refusing assistance to a sheriff; and no person to whom such justice shall be known or shall declare himself to be a justice of the peace, shall be permitted to plead any excuse on pretence of ignorance of his office.

Falsely assuming to be justice or officer.

Sec. 19. If any person shall falsely assume or pretend to be a justice of the peace, sheriff, deputy sheriff, coroner or constable, and shall take upon himself to act as such, to require any person to aid or assist him in any matter pertaining to the duty of a justice of the peace, sheriff, deputy sheriff, coroner or constable, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding two hundred dollars.

Disguising, to obstruct execution of the law.

Sec. 20. Every person who shall in any manner disguise himself, with intent to obstruct the due execution of the law, or with intent to intimidate, hinder or interrupt any officer or any other person in the legal performance of his duty, or the exercise of his rights under the laws of the United States or of this state, whether such intent shall be effected or not, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding one hundred dollars.

Concealing and compounding offences.

Sec. 21. If any person having knowledge of the commission of any offence, shall take any money or gratuity or reward, or any engagement therefor, upon an agreement or understanding, express or implied, to compound or conceal such offence, or not to prosecute therefor, or not to give evidence thereof, he shall, where such offence of which he had knowledge was punishable with death, be punished by imprisonment in the state prison, not more than two years; and where the offence of which he so had knowledge was punishable in any other manner, he shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding one hundred dollars.

Officers taking rewards for omitting duty.

Sec. 22. If any sheriff, constable or other officer, authorized to serve legal process, shall receive from a defendant or any other person, any money or other valuable thing as a consideration, reward or inducement for delaying or omitting to arrest any defendant, or to carry him before a magistrate, or for delaying to take any person to prison, or for postponing the sale of any property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars.

CHAPTER 137.

OF OFFENCES AGAINST THE PUBLIC PEACE.

Unlawful assemblies how suppressed.

Section 1. If any persons to the number of twelve or more, any of whom being armed with any dangerous weapon, or if any persons to the number of thirty or more, whether armed or not, shall be unlawfully, riotously or tumultuously assembled in any city or town, it shall be the duty of the mayor and each of the aldermen of such city, and of the president and each of the trustees of such town, and of every justice of the peace living in such

CHAPTER 137.

city or town, and of the sheriff of the county and his deputies, and also of every constable and coroner living in such city or town, to go among the persons so assembled, or as near them as may be with safety, and in the name of the State of Wisconsin to command all the persons so assembled, immediately and peaceably to disperse; and if the persons so assembled shall not thereupon immediately and peaceably disperse, it shall be the duty of each of the magistrates and officers to command the assistance of all persons there present, in seizing, arresting and securing in custody, the persons so unlawfully assembled, so that they may be proceeded with according to law.

Refusing to assist when required, &c.

SEC. 2. If any person present being commanded by any of the magistrates or officers mentioned in the preceding section, to aid or assist in seizing and securing such rioters or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, shall refuse or neglect to obey such command, he shall be deemed to be one of the rioters or persons unlawfully assembled, and shall be liable to be prosecuted therefor, and punished accordingly.

Neglect of officers how punished.

SEC. 3. If any mayor, alderman, president, trustee, justice of the peace, sheriff or deputy sheriff, constable or coroner having notice of any such riotous or tumultuous and unlawful assembly, as is mentioned in this chapter, in the city or town in which he lives, shall neglect or refuse immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or shall neglect or omit to exercise the authority with which he is invested by this chapter, for suppressing such riotous or unlawful assembly, and for arresting and securing the offenders, he shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding three hundred dollars.

Officers may use force to suppress disturbances.

SEC. 4. If any persons who shall be so riotously and unlawfully assembled, and who have been commanded to disperse, as before provided, shall refuse or neglect to disperse without unnecessary delay, any two of the magistrates or officers before mentioned, may require the aid of a sufficient number of persons, in arms or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be expedient, forthwith to disperse and suppress such unlawful, riotous or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Armed force when called out, to obey orders of governor, &c.

SEC. 5. Whenever an armed force shall be called out for the purpose of suppressing any tumult or riot, or dispersing any body of men acting together by force, with intent to commit any felony, or to offer violence to persons or property, or with intent by force or violence to resist or oppose the execution of the laws of this state, such armed force when they shall arrive at the place of such unlawful, riotous or tumultuous assembly, shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all the persons who are committing any of the said offences, as they may have received from the governor, or from any judge of a court of record, or the sheriff of the county, and also such further orders as they there shall receive from any two of the magistrates or officers mentioned in the first section.

Officers, &c., to be guiltless though death ensue, &c.

SEC. 6. If by reason of any of the efforts made by any of the said magistrates or officers, or by their direction, to disperse such unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person or other persons then present as spectators or otherwise, shall be killed or wounded, the said magistrates and officers, and all persons acting by their order, or under their direction, shall be held guiltless and fully justified in law; and if any of the said magistrates or officers, or any person acting by their order or under their direction, shall be killed or wounded, all the persons so unlawfully riotously and tumultuously assembled, shall be held answerable therefor.

Riotously destroying house, &c.

SEC. 7. If any of the persons so unlawfully assembled, shall demolish, pull down or destroy any dwelling house, or any other building, or any ship, steamboat or vessel, he shall be punished by imprisonment in the state prison, not more than seven years nor less than three years.

CHAPTER 138.

OF OFFENCES AGAINST PUBLIC POLICY.

Setting up or promoting illegal lotteries.

SECTION 1. Every person who shall set up or promote any lottery for money, or shall dispose of any property of value, real or personal, by way of lottery, aud every person who shall aid either by printing or writing, or shall in any way be concerned in setting up, managing or drawing any such lottery, or who shall in any house, shop or building owned or occupied by him or under his control, knowingly permit the setting up, managing or drawing of any such lottery, or the sale of any lottery ticket, or share of a ticket, or any other writing, certificate, bill, token or any other device, purporting or intended to entitle the holder, bearer, or any other person, to any prize or interest, or share of any prize to be drawn in a lottery, shall for every such offence be punished by imprisonment in the county jail, not more than six months, nor less than one month.

Selling lottery ticket or aiding therein.

SEC. 2. Every person who shall sell, either for himself or for any other person, or shall offer for sale, or shall have in his possession, with intent to sell or to offer for sale, or to exchange or negotiate, or shall in any wise aid or assist in the selling, negotiating or disposing of a ticket in any such lottery, or a share of a ticket, or any such writing, certificate, bill, token or other device, as is mentioned in the preceding section, shall be punished by fine, not exceeding five hundred dollars, nor less than one hundred dollars.

On second conviction.

SEC. 3. If any person shall after being convicted of any offence mentioned in either of the two preceding sections, commit the like offence, or any other of the offences therein mentioned, he shall be punished by imprisonment in the state prison not more than two years, nor less than six months.

Advertising lottery ticket, &c.

SEC. 4. Every person who shall advertise any lottery ticket, or any share in such ticket for sale, either by himself or any other person, or who shall set up or exhibit any sign, symbol, or any emblematic or other representation of a lottery, or of the drawing thereof, or any such writing, certificate, bill, token, or other device before mentioned, or where the same may be purchased or obtained, or shall in any way invite or entice, or attempt to invite or entice any other person to purchase or receive the same, shall be punished by fine, not exceeding one hundred dollars.

Making or selling tickets in fictitious lottery.

SEC. 5. Every person who shall make or sell, or shall have in his possession, with intent to sell or exchange or negotiate, or who shall by printing, writing or otherwise assist in making or selling, or in attempting to sell, exchange or negotiate any false or fictitious lottery ticket, or any share thereof, or any writing, certificate, bill, token or other device before mentioned, or any ticket or share thereof, in any fictitious or pretended lottery, knowing the same to be false or fictitious, or who shall receive any money or other thing of value for any such ticket or share of a ticket, or for any such writing, certificate, bill, token or other device, purporting that the owner, bearer or holder thereof shall be entitled to receive any prize or any share of a prize, or any other thing of value that may be drawn in any lottery, knowing the same to be false or fictitious, shall for every such offence be punished by imprisonment in the state prison not exceeding two years nor less than six months.

Defendant to prove genuineness of tickets, &c.

SEC. 6. Upon a trial of an indictment for either of the offences mentioned in the preceding section, any ticket or share of a ticket, or any other writing or thing before mentioned, which the defendant shall have sold or offered for sale, or for which he shall have received any valuable consideration, shall be deemed to be false, spurious or fictitious, unless such defendant shall prove the same to be true and genuine, and to have been duly issued by the authority of some legislature within the United States, and that such lottery was existing and undrawn, and that such ticket or share thereof, or other writing or thing before mentioned, was issued by lawful authority, and binding upon the persons who issued the same.

Prizes forfeited to state.

SEC. 7. All sums of money, and every other valuable thing drawn as a prize or share of a prize in any lottery, by any person being an inhabitant or resident within this state, and all sums of money and other things of value received by such person, by reason of his being the owner or holder of any ticket or share of a ticket, in any lottery or pretended lottery, contrary to the provisions of this chapter, shall be forfeited to the use of the state, and may be recovered by an information to be filed, or by an action for money had and received, to be brought by the attorney general or any district attorney, in the name and on behalf of the said state.

Punishment for keeping gaming device.

SEC. 8. Every person who shall deal cards at the game called faro, and every person who shall keep to be used in gaming, any gambling device whatsoever, designed to be used in gaming, shall be punished by imprisonment in the county jail, not more than six months nor less than one month.

Betting at gaming table, &c.

Sec. 9. Every person who shall bet any money or other property at or upon any gaming table, game or device prohibited by this chapter, shall be punished by fine not exceeding twenty dollars, nor less than five dollars for each offence.

Permitting gambling table to be used, &c.

Sec. 10. Every person who shall suffer any gaming table, bank or device prohibited in this chapter to be set up or used for the purpose of gaming in any house, building, shed, lot, yard or garden to him belonging, or by him occupied, or of which he has the control, shall be punished by imprisonment in the county jail, not more than six months, nor less than one month.

Who not incapacitated from testifying.

Sec. 21. No person shall be incapacitated or excused from testifying, touching any offence committed by another against any of the provisions of this chapter relating to gaming, by reason of his having bet or played at the prohibited games or gaming devices; but the testimony which may be given by such person shall in no case be used against such witness.

Officer may break doors, &c.

Sec. 12. Any officer who may be charged with the execution of any warrant to seize and bring before any magistrate any gaming apparatus or device, shall have power if necessary to break open doors for the purpose of executing the same, and for that purpose may summon to his aid the power of the county.

Duty of judge.

Sec. 13. The judge of each circuit court, shall at each term thereof give this chapter in special charge to the grand jury.

Ib.; sheriffs, &c.

Sec. 14. It shall be the duty of all sheriffs and constables in their proper county, to complain and give information of any breach of this chapter, and if any of the above named officers shall fail to complain and give information of any breach of this chapter which shall come to his knowledge, he shall, upon conviction thereof, forfeit his office and be removed from the same.

CHAPTER 139.

OF OFFENCES AGAINST CHASTITY, MORALITY AND DECENCY.

Adultery, how punished.

Section 1. Every person who shall commit the crime of adultery, shall be punished by imprisonment in the state prison not more than two years, nor less than six months, or by fine not exceeding three hundred dollars, nor less than seventy dollars, and when the crime is committed between a married woman and a man who is unmarried, the man shall be deemed guilty of adultery, and be liable to the same punishment.

Polygamy.

Sec. 2. If any person who has a former husband or wife living, shall marry another person or shall continue to cohabit with such second husband or wife, he or she shall, except in the cases mentioned in the third section, be deemed guilty of the crime of polygamy, and shall be punished by imprisonment in the state prison, not more than four years, nor less than two years, or by fine not exceeding five hundred dollars, nor less than three hundred dollars.

Excepted cases.

Sec. 3. The provisions of the preceding section shall not extend to any person, whose husband or wife shall have been continually remaining beyond sea, or shall have voluntarily withdrawn from the other, and remained absent for the space of seven years together, the party marrying again not knowing the other to be living within that time; nor to any person who has been legally divorced from the bonds of matrimony, and was not the guilty cause of such divorce.

Lewd and lascivious cohabitation.

Sec. 4. If any man and woman, not being married to each other, shall lewdly and lasciviously cohabit and associate together, or if any man or woman, married or unmarried, shall be guilty of open and gross lewdness, and lascivious behavior, every such person shall be punished by fine, not exceeding three hundred dollars, nor less than seventy dollars.

Fornication.

Sec. 5. If any man shall commit fornication with any single woman, each of them shall be punished by imprisonment in the jail, not more than thirty days, or by fine not exceeding thirty dollars.

Punishment of seduction as a crime,

Sec. 6. Any unmarried man, who, under promise of marriage, or any married man, who shall seduce and have illicit connexion with any unmarried female of previous chaste character, shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in a state prison, not exceeding five years, or by imprisonment in a county jail not exceeding one year; but no conviction shall be had under the provisions of this section on the testimony of the female seduced, unsupported by other evidence, nor unless indictment shall be found within two years after the commission of the offence: Provided, that the subsequent intermarriage of the parties may be plead in bar of a conviction.

Mother concealing death of bastard.

Sec. 7. If any woman shall conceal the death of any issue of her body, which, if born alive, would be a bastard, so that it may not be known whether such issue was born alive or not, or whether it was not murdered, she shall be punished by imprisonment in the state prison, not more than one year, nor less than six months, or by fine not exceeding three hundred dollars, nor less than one hundred dollars.

Offence inserted in indictment.

Sec. 8. Any woman who shall be indicted for the murder of her infant bastard child, may also be charged in the same indictment, with the offence described in the next preceding section, and if on the trial, the jury shall acquit her of the charge of murder, and find her guilty of the other offence, judgment and sentence may be awarded against her for the same.

Keeping house of ill-fame.

Sec. 9. Every person, who shall keep a house of ill-fame, resorted to for the purpose of prostitution or lewdness, shall be punished by imprisonment in the state prison, not more than one year, nor less than six months, or by fine not exceeding three hundred dollars, nor less than one hundred dollars.

Lease of such house when void.

Sec. 10. Whenever the lessee of any dwelling house shall be convicted of the offence mentioned in the next preceding section, the lease or contract for letting such house, shall, at the option of the lessor, become void, and such lessor shall thereupon have the like remedy to recover the possession, as against a tenant for holding over after the expiration of his term.

Selling, &c. obscene books, &c.

Sec. 11. If any person shall import, print, publish, sell or distribute any book, or any pamphlet, ballad, printed paper or other thing, containing obscene language or obscene prints, pictures, figures or descriptions, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education, or shall buy, procure, receive or have in his possession, any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of loan, sale, exhibition or circulation, or with intent to introduce the same into any family, school or place of education, he shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding two hundred dollars.

Justice may issue search warrant for such books, &c.

Sec. 12. Any justice of the peace may issue a search warrant, for the purpose of searching for any obscene books, pamphlets, ballads, printed papers or other things mentioned in the next preceding section, in the manner provided by law; and all such things which shall be found by any officer, in executing a search warrant, or which shall be produced or brought into court, shall be safely kept so long as shall be necessary, for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court, before whom the same shall be brought.

When prosecutor to receive part of fine, &c.

Sec. 13. When any person is convicted, under any of the provisions contained in either of the two next preceding sections, and sentenced to pay a fine, there shall be paid to the person who shall inform and prosecute such offender to conviction, one-half of the amount of the fine, which shall be actually paid by such convict; and the person who shall inform and prosecute, shall, notwithstanding, be competent to testify as witness in the prosecution.

Incest.

Sec. 14. All persons being within the degrees of consanguinity, within which marriages are prohibited, or declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, shall be punished by imprisonment in the state prison not more than two years nor less than six months.

Sodomy.

Sec. 15. Every person who shall commit sodomy, or the crime against nature, either with mankind or any beast, shall be punished by imprisonment in the state prison, not more than five years nor less than one year.

Disturbing religious worship.

Sec. 16. Every person who, on the Lord's day, or at any other time, shall wilfully interrupt or disturb any assembly of people met for the worship of God, within the place of such meeting, or out of it, shall be punished by fine not exceeding twenty dollars, nor less than five dollars.

Violation of sepulchre.

Sec. 17. If any person not being lawfully authorized, shall wilfully dig up, disinter, remove or convey any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender, and every person accessory thereto, either before or after the fact, shall be punished by imprisonment in the state prison not more than two years nor less than six months, or by fine not exceeding two hundred dollars.

Injuring or de-

Sec. 18. If any person shall wilfully or with evil intent, destroy,

CHAPTER 139.

facing tombs, &c.

mutilate, deface or remove any tomb, monument, gravestone or other structure or thing, placed or designed for a memorial of the dead, or any fence, railing, curb or other thing intended for the protection, or for the ornament of any tomb, monument, gravestone or other structure before mentioned, or of any inclosure for the burial of the dead, or shall wilfully and with evil intent destroy, mutilate, remove, cut, break or injure any tree, shrub or plant placed or being within any such inclosure, the person so offending shall be punished by fine not exceeding three hundred dollars, nor less than twenty-five dollars.

Making roads, &c through burial grounds.

SEC. 19. If any person shall open or make any highway or town way, or shall construct any rail-road, turnpike or canal, or any other thing in the nature of a public easement, over, through, in or upon such part of any inclosure, being the property of a town, village or religious society, or of private proprietors, as may be used for the burial of the dead, unless an authority for that purpose shall be specially granted by law, or unless the consent of such town, village or religious society, or private proprietors respectively, shall be first obtained, he shall be punished by fine not exceeding three hundred dollars nor less than sixty dollars, or by imprisonment in the state prison not more than one year nor less than six months.

Cruelty to animals.

SEC. 20. Every person who shall cruelly beat or torture any horse, ox or other animal, whether belonging to himself or another, shall be punished by imprisonment in the county jail, not more than thirty days, or by fine not exceeding fifty dollars nor less than five dollars.

Labor prohibited on Sunday.

SEC. 21. No person shall keep open his shop, ware-house or work-house, or shall do any manner of labor or business, or work, except only works of necessity and charity, or be present at any dancing, or any public diversion, show or entertainment, or take part in any sport, game or play on the Lord's day, commonly called Sunday; and every person so offending shall be punished by a fine not exceeding two dollars for each offence.

Sunday what time to include.

SEC. 22. For the purposes of the provisions of the twenty-first section, the Lord's day shall be understood to include the time between the midnight preceding, and the midnight following the said day.

Civil process not to be served on Sunday.

SEC. 23. No person shall serve or execute any civil process from midnight preceding to midnight following the said Lord's day, but such service shall be void, and the person serving or executing such process, shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

When persons observe other day as Sunday.

SEC. 24. No person who conscientiously believes that the seventh, or any other day of the week ought to be observed as the Sabbath, and who actually refrains from secular business and labor on that day, shall be liable to the penalties of the twenty-first section of this chapter, for performing secular business or labor on the Lord's day, or first day of the week, unless he wilfully disturbs some other person.

Power of justices under this chapter.

SEC. 25. Justices of the peace shall have jurisdiction of the offences mentioned in the fifth, sixteenth, twentieth, and twenty-first sections of this chapter.

CHAPTER 140.

OF OFFENCES AGAINST THE PUBLIC HEALTH.

Penalty for selling unwholesome provisions, &c.

SECTION 1. If any person shall knowingly sell any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail not more than six months, or by fine, not exceeding one hundred dollars.

For adulterating food, liquors, &c.

SEC. 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquor, or other liquor intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars, and the articles so adulterated shall be forfeited and destroyed.

Ib., of drugs and medicines.

SEC. 3. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such a manner as to render the same injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars, and such adulterated drugs and medicines shall be forfeited and destroyed.

For inoculating with small pox.

SEC. 4. If any person shall inoculate himself, or any other person, or shall suffer himself to be inoculated with the small pox, within this state, with intent to cause the prevalence or spread of this infectious disease, he shall be punished by imprisonment in the state prison, not more than three years nor less than one year.

Physician, &c, prescribing when intoxicated.

SEC. 5. If any physician, or other person, while in a state of intoxication, shall prescribe any poison, drug or medicine, to another person, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Apothecary, &c., selling arsenic &c, without labelling, &c.

SEC. 6. Every apothecary, druggist, or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, or any other active poison, without having the word "poison," and the true name thereof in english, written or printed, upon a label attached to the vial, box, or parcel containing the same, shall be punished by a fine not exceeding one hundred dollars.

CHAPTER 141.

GENERAL PROVISIONS CONCERNING CRIMES AND PUNISHMENTS.

Accessory to felony before the fact; how punished.

SECTION 1. Every person who shall be aiding in the commission of any offence which shall be a felony, or who shall be accessory thereto before the fact, by counselling, hiring, or otherwise procuring such felony to be committed, shall be punished in the same manner as is or shall be prescribed for the punishment of the principal felon.

CHAPTER 141.

Ib.

SEC. 2. Every person who shall counsel, hire, or otherwise procure any offence to be committed which shall be a felony, may be indicted and convicted as an accessory before the fact, either with the principal felon, or after the conviction of the principal felon; or he may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been convicted, or shall or shall not be amenable to justice, and in the last mentioned case may be punished in the same manner as if convicted of being an accessory before the fact.

Accessory how tried.

SEC. 3. Any person charged with the offence in the preceding section, may be indicted, tried and punished in the same court and in the same county where the principal felon might be indicted and tried, although the offence of counselling, hiring, or procuring the commission of such felony may have been committed either within or without the limits of this state.

After fact, how punished.

SEC. 4. Every person not standing in the relation of husband or wife, parent or grand-parent, child or grand-child, brother or sister, by consanguinity or affinity to the offender, who, after the commission of any felony, shall harbor, conceal or maintain, or assist any principal felon or accessory before the fact, or shall give such offender any other aid, knowing that he had committed a felony or had been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial, or punishment, shall be deemed an accessory after the fact, and shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars:

How tried.

SEC. 5. Every person who shall become an accessory after the fact to any felony, either at common law or by any statute made, or which shall hereafter be made, may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously, or shall or shall not be amenable to justice by any court having jurisdiction to try the principal felon, and either in the county where such person shall have become an accessory, or in the county where such principal felony shall have been committed.

On indictments for libel the truth may be given in evidence, &c.

SEC. 6. In all criminal prosecutions or indictments for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libellous be true, and was published with good motives and justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Jury to determine the law and fact.

Offences committed near boundary of county.

SEC. 7. Offences committed on the boundary lines of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed in either of them, and may be prosecuted and punished in either county.

When mortal wound, &c., in one county and death in another.

SEC. 8. If any mortal wound shall be given, or other violence or injury shall be inflicted, or any poison shall be administered in one county, by means whereof death shall ensue in another county, the offence may be prosecuted in either county.

Ib., without the state &c.

SEC. 9. If any such mortal wound shall be inflicted, or other violence or injury done, or poison administered, either within or without the limits of this state, by means whereof death shall ensue in any county thereof, such offence may be prosecuted and punished in the county where such death may happen.

Allegation in indictment for embezzlement, and evidence thereof.

Sec. 10. In any prosecution for the offence of embezzling the money, bank notes, checks, drafts, bills of exchange, or other security for money of any person, by a clerk, agent, or servant of such person, it shall be sufficient to allege generally in the indictment an embezzlement of money to a certain amount, without specifying any particulars of such embezzlement, and on the trial evidence may be given of any such embezzlement committed, within six months next after the time stated in the indictment, and it shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance if it shall be proved that any money, bank note, check, draft, bill of exchange, or other security for money of such person, of whatever amount, was fraudulently embezzled by such clerk, agent, or servant, within the said period of six months.

What deemed proof of ownership of property stolen, &c.

Sec. 11. In the prosecution of any offence committed upon or in relation to, or in any way affecting any real estate, or any offence committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on the trial that at the time when the offence was committed, either the actual or constructive possession, or the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged in the indictment, or other accusation, to be the owner thereof.

Fines, &c., may be recovered by indictment in circuit court.

When before justices of the peace.

Sec. 12. All fines and forfeitures imposed as a punishment for any offence, or for the violation or neglect of any duty imposed by a statute, may be prosecuted for and recovered by indictment in the circuit court; or when the amount or value thereof does not exceed one hundred dollars, the same may be prosecuted for by complaint before a justice of the peace, who shall have jurisdiction thereof concurrently with the circuit court.

Plea of benefit of clergy and petit treason abolished.

Sec. 13. The plea of benefit of clergy, and the distinction between murder and petit treason, are abolished, and the last named offence shall be prosecuted and punished as murder.

Definition of "felony."

Sec. 14. The term "felony," when used in any statute, shall be construed to mean an offence for which the offender, on conviction, shall be liable by law to be punished by death, or by imprisonment in a state prison.

TITLE XXXI.

OF PROCEEDINGS IN CRIMINAL CASES.

CHAPTER 142 Of search warrants and proceedings thereon.
143 Of demanding fugitives from justice and proceedings thereon.
144 Of proceedings to prevent the commission of crimes.
145 Of the arrest and examination of offenders, commitment for trial and taking bail.
146 Of indictments and proceedings before trial.
147 Of the change of venue in criminal cases.
148 Of trials in criminal cases.
149 Of appeals, new trials and exceptions in criminal cases.
150 Of judgments in criminal cases, and the execution thereof.
151 Of pardons.
152 Of inquests of the dead.

CHAPTER 142.

OF SEARCH WARRANTS AND PROCEEDINGS THEREON.

Search warrants, when and by whom issued. SECTION 1. When complaint shall be made, on oath, to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue his warrant to search for such property.

Id. SEC. 2. Any such magistrate when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search warrants in the following cases, to wit:

1. To search for and seize any counterfeit or spurious coin, forged bank notes, and other forged instruments, or tools, machines, or materials, prepared or provided for making either of them:

2. To search for and seize any books, pamphlets, ballads, printed papers, or other things, containing obscene language, or obscene prints, pictures, figures, or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated, or to be distributed, introduced into any family, school, or place of education:

3. To search for and seize lottery tickets, or materials for a lottery, made, provided, or procured for the purpose of drawing a lottery:

4. To search for and seize any gaming apparatus, or implements used, or kept and to be used in unlawful gaming, in any gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

To whom issued and what to contain.

Sec. 3. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house, or place where the stolen property or other things, for which he is required to search, are believed to be concealed, which place and property, or things to be searched for, shall be designated and described in the warrant, and to bring such stolen property, or other things, when found, and the person in whose possession the same shall be found, before the magistrate who issued the warrant, or before some other magistrate, or court, having cognizance of the case.

Property seized, how kept and disposed of.

Sec. 4. When any officer, in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any other things, for which a search is allowed by this chapter, all the property and things, so seized, shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced as evidence on any trial, and as soon as may be, afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant shall be destroyed, under the direction of the court or magistrate.

CHAPTER 143.

OF DEMANDING FUGITIVES FROM JUSTICE AND PROCEEDINGS THEREON.

Governor may appoint agents to demand fugitives from justice, &c.

Section 1. The governor of this state may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any other state or territory, any fugitive from justice, or any person charged with felony or any other crime, in this state; and whenever an application shall be made to the governor for that purpose, the district attorney, or any other prosecuting officer of the state, when required by the governor, shall forthwith investigate the grounds of such application, and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand; but the governor may, in any case, appoint such agents without requiring the opinion of, or any report from, the district attorney, and the accounts of the agents, appointed for such purpose, shall in all cases, be audited by the governor and paid from the state treasury.

Expenses, how paid.

Proceedings on demand of fugitives charged with crime from other states.

Sec. 2. When a demand shall be made upon the governor of this state by the executive of any other state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory, with treason, felony or any other crime, the district attorney, or any other prosecuting officer of the state, when required by the governor, shall forthwith investigate the ground of such demand, and report to the governor all material facts which may come to his knowledge, as to the situation and circumstances of the person so demanded, especially whether he is held in custody, or is under recognizance to answer for any offence against the laws of this state or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up, and if the governor is satisfied that such demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the state, authorizing the agents who make such demand either forthwith, or at such time as shall be designated by the warrant, to take and transport such person to the line of the state, at the expense of such agents, and shall also, by such warrant, require the civil officers within this state to afford all needful assistance, in the execution thereof.

When and how court or magistrate to issue warrant, and what to contain.

SEC. 3. Whenever any person shall be found within this state, charged with any offence, committed in any other state or territory, and liable by the constitution and laws of the United States, to be delivered over upon the demand of the executive of such other state or territory, any court or magistrate, authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offence, and such other matters, as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same, or some other court or magistrate, within the state, to answer to such complaint as in other cases.

When and how person charged to give recognizance.

When committed.

Forfeiture of recognizance.

If charged with capital offence, to be committed

SEC. 4. If upon examination of the person charged, it shall appear to the court or magistrate, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate; and if such person shall not so recognize, he shall be committed to prison, and be there detained until such day, in like manner, as if the offence charged had been committed within this state; and if the person so recognizing shall fail to appear, according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

When discharged.

May be delivered on warrant of executive, &c.

SEC. 5. If the person so recognized or committed, shall appear before the court or magistrate, upon the day ordered, he shall be discharged, unless he be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew, for his appearance at some other day, and if, when ordered, he shall not so recognize, he shall be committed and detained, as before provided; whether the person so charged shall be recognized, committed or discharged, any person, authorized by the warrant of the executive, may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

SEC. 6. The complainant, in such case, shall be answerable for all the actual costs and charges, and for the support in prison, of any person so committed, and shall advance to the jailer one week's board, at the time of commitment, and so from week to week, as long as such person shall remain in jail, and if he fail so to do, the jailer may forthwith discharge such person from his custody.

Complainant answerable for costs and support of prisoner, &c.

CHAPTER 144.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

SECTION 1. The judges of the several courts of record, in vacation, as well as in open court, and all justices of the peace, shall have power to cause all laws made for the preservation of the public peace, to be kept; and in the execution of that power may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

Officers authorized to keep the peace, &c.

SEC. 2. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complainant, and any witness who may be produced, on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant.

Complaint how made.

SEC. 3. If, upon examination, it shall appear that there is just cause to fear that any such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

Warrant and arrest.

SEC. 4. The magistrate before whom any person is brought upon a charge of having made threats as aforesaid, shall, as soon as may be, examine the complainant and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge which may be deemed pertinent.

Examination of complainant, &c.

SEC. 5. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross examination, of the witnesses in support of the prosecution.

Ib., of witnesses for prisoner; to have counsel.

SEC. 6. If, upon examination, it shall appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be required to enter into a recognizance, and with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this state, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding six months; but he shall not be ordered to recognize for his appearance at the

When prisoner required to give recognizance, &c.

CHAPTER 144.

circuit court, unless he is also charged with some offence for which he ought to be held to answer at said court.

When discharged.

SEC. 7. Upon complying with the order of the magistrate, the party complained of shall be discharged.

If he refuse to recognize to be committed.

SEC. 8. If the person so ordered to recognize shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

When discharged, and when complainant to pay costs.

SEC. 9. If, upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous, or malicious, he shall order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees as for his own debt.

Payment of costs in other cases.

SEC. 10. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace, or for his good behavior, the magistrate may further order the costs of prosecution, or any part thereof, to be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

Appeal allowed.

SEC. 11. Any person aggrieved by the order of any justice of the peace, requiring him to recognize as aforesaid, may, on giving the security required, appeal to the circuit court next to be holden in the same county, or that county to which said county is attached for judicial purposes.

Witnesses to recognize on appeal.

SEC. 12. The magistrate from whose order an appeal is so taken, shall require such witnesses as he may think necessary to support the complaint, to recognize for their appearance at the court to which appeal is made.

Proceedings on appeal.

SEC. 13. The court before which such appeal is prosecuted may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as he may deem just and reasonable.

Recognizance when to remain in force.

SEC. 14. If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

Not recognizing, how afterwards discharged.

SEC. 15. Any person committed for not finding sureties, or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

Recognizances transmitted to court

SEC. 16. Every recognizance taken in pursuance of the foregoing provisions shall be transmitted by the magistrate to the circuit court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

When required on view of court, &c.

SEC. 17. Any person who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who in the presence of such court or magistrate shall contend, with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace and being of good behavior, for a term not exceeding six months, and in case of a refusal, may be committed as before directed.

Persons going armed to give security, &c.

SEC. 18. If any person shall go armed with a dirk, dagger, sword, pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family, or property, he may, on complaint of any other person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided.

Court may remit penalty.

SEC. 19. Whenever, upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

Surety may surrender principal, &c.

SEC. 20. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender shall be discharged and exempt from all liability for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and thereupon shall be discharged.

CHAPTER 145.

OF THE ARREST AND EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL AND TAKING BAIL.

Officers empowered to enforce this chapter.

SECTION 1. For the apprehension of persons charged with offences, the judges of the several courts of record, in vacation as well as in term time, and all justices of the peace are authorized to issue process to carry into effect the provisions of this statute.

Complaint how made; warrant to issue and what to contain.

SEC. 2. Upon complaint made to any such magistrate that a criminal offence has been committed, he shall examine on oath the complainant and any witnesses produced by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offence has been committed, the court or justice shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the said court or justice, or before some other court or magistrate of the county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

In what counties warrants to be executed, &c

SEC. 3. If any person against whom a warrant may be issued for an alleged offence committed in any county, shall either before or after the issuing of such warrant, escape from or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged in any county in this state, and for that purpose may command aid, and exercise the same authority as in his own county.

When prisoner brought before magistrate of county, where arrest made, &c.

SEC. 4. In all cases where the offence charged in the warrant is not punishable by death or imprisonment in the state prison, if the person arrested request that he may be brought before a magistrate of the county in which the arrest was made, for the purpose of entering into a recognizance without a trial or examination, the officer making the arrest shall carry him before a magistrate of that county, who may take from the person arrested a recognizance with sufficient sureties, for his appearance at the court having cognizance of the offence, and next to be holden in the county where it shall be alleged to have been committed, and the party arrested shall thereupon be liberated.

Proceedings if magistrate take bail.

SEC. 5. The magistrate who shall so let the person arrested to bail, shall certify that fact upon the warrant, and shall deliver the same, with the recognizance by him taken, to the person who made the arrest, who shall cause the same to be delivered without unnecessary delay to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant, or the district attorney, shall cause such witnesses to be summoned to the same court as he shall think necessary.

When prisoner taken before magistrate who issued warrant, &c.

SEC. 6. If the magistrate in the county where the arrest was made shall refuse to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or in his absence before some other magistrate of the county in which the warrant was issued, to be proceeded with as hereafter directed.

Ib.

SEC. 7. When the offence charged in any warrant is punishable with death, or by imprisonment in the state prison, the officer making the arrest in some other county, shall convey the prisoner to the county where the warrant issued, and he shall be proceeded with in the manner directed in the following section.

Ib.

SEC. 8. Every person arrested by warrant for any offence where no other provision is made for his examination thereon, shall be brought before the magistrate who issued the warrant, or if he be absent or unable to attend, before some other magistrate of the same county, and the warrant with the proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

Examination may be adjourned, &c.

Sec. 9. Any magistrate may adjourn an examination or trial pending before himself, from time to time, as occasion shall require, not exceeding ten days at one time, without the consent of the defendant or person charged, and to the same or a different place in the county, as he shall think proper; and in such case, if the party is charged with a capital offence, he shall be committed in the mean time; otherwise he may be recognized in a sum, and with sureties, to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance he shall be committed to prison.

Duty of magistrate in case of default.

Sec. 10. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance, with the record of such default to the circuit court, and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before that court.

When party fails to recognize, to be committed, &c.

Sec. 11. When such person shall fail to recognize, he shall be committed to prison, by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day to be named in the order; and on the day appointed, he may be brought before the magistrate by his verbal order to the same officer by whom he was committed, or by an order in writing to a different person.

Examination how conducted.

Sec. 12. The magistrate before whom any person is brought upon a charge of having committed an offence, shall, as soon as may be, examine the complainant and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge which may be deemed pertinent.

Ib.

Sec. 13. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross examination of the witnesses in support of the prosecution.

Ib.

Sec. 14. The magistrate, while examining any witness, may at his discretion exclude from the place of examination all the other witnesses; he may also, if requested, or if he see cause, direct the witnesses for or against the prisoner to be kept separate, so that they cannot converse with each other, until they shall have been examined.

Testimony reduced to writing, &c.

Sec. 15. The testimony of the witnesses examined, shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses if required by the magistrate.

Prisoner when discharged.

Sec. 16. If it shall appear to the magistrate upon the whole examination that no offence has been committed, or that there is not probable cause for charging the prisoner with the offence, he shall be discharged.

What offences bailable.

Sec. 17. Persons charged with an offence punishable with death shall not be admitted to bail, when the proof is evident or the presumption great, but for all other offences, bail may be taken in such sum as, in the opinion of the magistrate, will secure the appearance of the person charged with the offence, at the court, where such person is to be tried.

When prisoner to be bailed or committed.

Sec. 18. If it shall appear that an offence has been committed, and that there is probable cause to believe the prisoner guilty, and if the offence be bailable by the magistrate, and the prisoner offer sufficient bail, it shall be taken and the prisoner discharged; but if no sufficient bail be offered, or the offence be not bailable by the magistrate, the prisoner shall be committed for trial.

Witnesses to recognize.

Sec. 19. When the prisoner is admitted to bail, or committed by the magistrate, he shall also bind by recognizance such witnesses against the prisoner as he shall deem material, to appear and testify at the next court having cognizance of the offence, and in which the prisoner shall be held to answer.

Sureties may be required.

Sec. 20. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into a recognizance, with such sureties as may be deemed necessary, for his appearance at court.

Recognizances of married women, &c.

Sec. 21. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may in his discretion take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

Witnesses refusing to recognize, to be committed.

Sec. 22. All witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

Who to let prisoners to bail.

Sec. 23. Any judge of a court of record, on application of any prisoner committed for a bailable offence, may inquire into the case and admit such prisoner to bail; and any person committed for not finding sufficient sureties to recognize for him, may be admitted to bail by either of said judges.

Magistrates may have associates.

Sec. 24. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of the same county, and they may together execute the powers and duties before mentioned, but no fees shall be taxed for such associates.

Examinations, &c., to be returned, &c.

Sec. 25. All examinations and recognizances taken by any magistrate, in pursuance of the provisions of this chapter, shall be certified and returned by him to the district attorney, or the clerk of the court before which the party charged is bound to appear, on or before the first day of the sitting thereof; and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment as for contempt.

Commitments superseded and recognizances discharged on acknowledgment of satisfaction, &c.

Sec. 26. When any person shall be committed to prison, or shall be under recognizance to any charge of assault and battery or other misdemeanor, for which the party injured may have a remedy by civil action, except when the offence was committed by or upon any sheriff or other officer of justice, or riotously or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may at his discretion on payment of all the costs which have accrued, discharge the recognizance or supercede the commitment by an order under his hand; and may also discharge all recognizances and supercede the commitment of all witnesses in the case.

Orders therefor to be filed, and effect thereof.

SEC. 27. Every such order of the magistrate, discharging the recognizance of the party or witnesses, shall be filed in the office of the clerk before the sitting of the court before which they are bound to appear; and every order superceding the commitment of the party charged, or any witnesses, shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action for such injury.

Proceedings on forfeited recognizances.

SEC. 28. When any person under recognizance in any criminal prosecution, either to appear and answer or to prosecute an appeal, or to testify in any court, shall fail to perform the condition of such recognizance, his default shall be recorded, and process shall be issued against the persons bound by the recognizance, or such of them as the prosecuting officer shall direct.

How surety may be discharged.

SEC. 29. Any surety in such recognizance may by leave of the court, after default, and either before or after the process has been issued against him, pay to the county treasurer or to the clerk of the court, the amount for which he was bound as surety, with such costs as the court shall direct, and be thereupon forever discharged.

Court may remit whole or part of penalty, &c.

SEC. 30. When any action is brought in the name of the State of Wisconsin, against a principal or surety in any recognizance entered into, either by a party or a witness in any criminal prosecution, and the penalty of such recognizance shall be adjudged forfeited, the court may, on application of any party defendant, remit any part or the whole of such penalty, and may render judgment thereon for the state, according to the circumstances of the case and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable.

When action on recognizance not to be barred by reason of omissions or defects.

SEC. 31. No such action brought on a recognizance as mentioned in the preceding section, shall be barred or defeated, nor shall judgment thereon be arrested by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, nor by reason of any such defect in the form of the recognizance, if it sufficiently appear from the tenor thereof at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken, was authorized by law to require and take such recognizance.

CHAPTER 146.

OF INDICTMENTS AND PROCEEDINGS BEFORE TRIAL.

When person accused of crime to be discharged.

SECTION 1. Any person held in prison on any charge of having committed a crime, shall be discharged if he be not indicted before the end of the second term of the court at which he is held to answer, unless it shall appear to the satisfaction of the court, that the witnesses on the part of the state have been enticed or kept away, or are detained and prevented from attending the court by sickness or some inevitable accident.

Limitation of criminal prosecutions.

SEC. 2. An indictment for a capital crime may be found at any period; all other indictments, for other crimes, shall be found, and filed within six years after the commission of the offence; but any period during which the party charged was not usually and publicly resident within the state shall not be reckoned as part of the six years.

When person taken into custody.

SEC. 3. If the grand jury shall find, and return to the court, an indictment for any crime against a person or persons who are not already in custody, process shall forthwith be issued to arrest the party charged with such offence.

When copy of indictment to be served

SEC. 4. As soon as may be, after the finding of such indictment for a capital crime, the party charged shall be served with a copy thereof, by the sheriff or his deputy, at least twenty-four hours before trial.

Indictments where tried; prisoner to have list of jurors, &c.

SEC. 5. All persons indicted shall be tried before the circuit court, and any prisoner indicted for a crime punishable with death, shall, on demand upon the clerk, by himself or his counsel, have a list of the jurors returned delivered to him, at least twenty-four hours before trial, and shall also have process to summon such witnesses as are necessary to his defence, at the expense of the state.

When to have copy of indictment, &c.

SEC. 6. Every person indicted for an offence for which he may be imprisoned in the state prison, shall, if he be under recognizance or in custody to answer for such offence, be entitled to a copy of the indictment and of all endorsements thereon, without paying any fees therefor.

Prosecuting officers to issue subpœnas.

SEC. 7. The district attorney and all other prosecuting officers may, in all cases, issue subpœnas for witnesses to appear and testify on behalf of the state; and the subpœnas, under the hand of such officer, shall have the same force, and be obeyed in the same manner and under the same penalties in case of default, as if issued by the clerk.

When fees need not be tendered.

SEC. 8. It shall not be necessary to pay or tender any fees to any witness who is subpœnaed in any criminal prosecution, but every such witness shall be bound to attend, and be punishable for non-attendance in the same manner as if the fees allowed by law had been paid to him.

When criminal prosecutions on indictment may be stayed.

SEC. 9. Whenever an indictment is found against any person for an assault and battery, or other misdemeanor for which the party injured may have a remedy by civil action, except where the offence was committed by or upon any sheriff, or other officer of justice, or riotously or with intent to commit a felony, if the party injured shall appear in court where such indictment is pending and acknowledge satisfaction for the injuries sustained, the court may, on payment of the costs accrued, order all further proceedings to be stayed, and discharge the defendant from the indictment, which shall forever bar all remedy for such injury by civil action.

Prisoner need not be asked, &c.

SEC. 10. When any person is arraigned upon an indictment, it shall not be necessary, in any case, to ask him how he will be tried.

If prisoner refuse to plead, plea of not guilty to be entered, &c.

SEC. 11. If, on the arraignment of any person who is indicted, he shall refuse to plead or answer, or shall not confess the indictment to be true, the court shall order a plea of not guilty to be entered, and thereupon the proceedings shall be the same as if he had pleaded not guilty to the indictment.

Person in prison upon indictment, when to be tried.

SEC. 12 Every person held in prison upon an indictment shall, if he require it, be tried as soon as the next term of the court after the expiration of six months from the time when he was imprisoned, or shall be bailed upon his own recognizance, unless it shall appear, to the satisfaction of the court, that the witnesses on behalf of the state have been enticed or kept away, or are detained and prevented from attending the court by sickness, or some inevitable accident.

Proof of truth of plea in abatement.

SEC. 13. When a plea in abatement, or other dilatory plea, to an indictment shall be offered, the court may refuse to receive it, until the truth thereof shall be proved by affidavit, or other evidence.

CHAPTER 147.

OF THE CHANGE OF VENUE IN CRIMINAL CASES.

Where criminal causes to be tried.

SECTION 1. All criminal causes shall be tried in the county where the offence was committed, except where otherwise provided by law, unless it shall appear to the satisfaction of the court, by affidavit, that a fair and impartial trial cannot be had in such county, in which case, the court before whom the cause is pending, if the offence charged in the indictment be punishable with death or imprisonment in the state prison, may direct the person accused to be tried in some adjoining county, where a fair and impartial trial can be had, but the party accused shall be entitled to a change of venue but once and no more.

When venue may be changed, &c.

When venue changed how trial conducted; what county to pay costs.

SEC. 2. When the venue is changed to an adjoining county, in a criminal case, the trial shall be conducted in all respects as if the indictment had been found in the county to which the venue is changed, and the costs accruing from a change of venue shall be paid by the county in which the offence was committed.

When accused to give bail; on failure, where to be imprisoned.

SEC. 3. When the court has ordered a change of venue, they shall require the accused, if the offence be bailable, to enter into a recognizance with good and sufficient sureties, to be approved by the court or judge, in such sum as the court or judge may direct, conditioned for his appearance in the court to which the venue is changed, at the first day of the next term thereof, and to abide the order of such court; and in default of such recognizance, a warrant shall be issued, directed to the sheriff, commanding him safely to convey the prisoner to the jail of the county where he or she is to be tried, there to be safely kept by the jailer thereof until discharged by due course of law.

When witnesses to recognize.

SEC. 4. When a change of venue is allowed, the court shall recognize the witnesses on the part of the state, to appear before the court in which the prisoner is to be tried.

District attorney may apply for change of venue; how granted.

SEC. 5. The attorney on behalf of the state, may also apply for a change of venue, and the court being satisfied that it will promote the ends of justice, may award a change of venue upon the same terms, and to the same extent, that are provided in this chapter, and the proceedings on such change of venue, shall be in all respects as above provided.

CHAPTER 148.

OF TRIALS IN CRIMINAL CASES.

Issues of fact, how tried.

SECTION 1. Issues of fact, joined upon any indictment, shall be tried by a jury drawn and returned in the manner prescribed by law for the trial of issues of fact in civil causes.

Grand juror when not to be petit juror.

SEC. 2. No member of the grand jury, which has found an indictment, shall be put upon the jury for the trial of such indictment if challenged for that cause by the defendant.

How many challenges allowed.

SEC. 3. Every person indicted for any offence, shall, when the jury is impannelled for his trial, be entitled to the same challenges that are allowed by law to defendants in civil causes.

Ib.

SEC. 4. The district attorney, and any other officer prosecuting an indictment, shall be entitled to the same challenges that are by law allowed to parties in civil causes.

Peremptory challenges.

SEC. 5. Any person who is put on trial for an offence punishable with death, shall be allowed to challenge peremptorily twenty-four of the persons returned as jurors and no more.

What to disqualify juror, in capital cases.

SEC. 6. No person whose opinions are such as to preclude him from finding any defendant guilty of an offence punishable with death, shall be compelled or allowed to serve as a juror on the trial of an indictment for such an offence.

Oaths of juror.

SEC. 7. The following oath shall be administered to all jurors for the trial of all criminal cases not capital: "You shall well and truly try the issue between the state of Wisconsin and the defendant, (or the defendants, as the case may be,) according to evidence, so help you God." In capital cases the following oath shall be administered to the jurors: "You shall well and truly try, and true deliverance make, between the state of Wisconsin and the prisoner at the bar whom you shall have in charge, according to evidence, so help you God."

Affirmation of jurors.

SEC. 8. Any juror who is consciencously scrupulous of taking either of the oaths above prescribed, shall be allowed to make affirmation, substituting the words, "this you do under the pains and penalties of perjury," instead of the words "so help you God."

When defendant to be present and when may be absent from trial.

SEC. 9. No person indicted for a felony shall be tried unless personally present during the trial; persons indicted for smaller offences may, at their own request, by leave of the court be put on trial in their absence by an attorney duly authorized for that purpose.

View may be ordered.

SEC. 10. The court may order a view by any jury impannelled to try a criminal case.

When convicted on part of offence charged.

SEC. 11. Whenever any person indicted for a felony, shall on trial be acquitted by verdict of part of the offence charged in the indictment, and convicted of the residue thereof, such verdict may be received and recorded by the court, and thereupon the person charged shall be adjudged guilty of the offence, if any, which shall appear to the court to be substantially charged by the residue of such indictment, and shall be sentenced and punished accordingly.

When jury may acquit of felonious intent and convict of assault, &c.

SEC. 12. In all cases of indictment in the circuit court, for assault with intent to commit any felony, it may be lawful for the jury, in case they do not find the felonious intent charged, to convict of the assault; and the court shall have power to sentence the person so convicted, to be punished by imprisonment in the jail of the county, for a term not exceeding one year, or by fine not exceeding five hundred dollars.

When acquitted by reason of insanity.

SEC. 13. When any person, indicted for an offence, shall on trial be acquitted by the jury by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged.

Person acquitted not liable for fees, &c.

SEC. 14. No prisoner or person under recognizance, who shall be acquitted by verdict or discharged because no indictment has been found against him, or for want of prosecution shall be liable for any costs or fees of office, or for any charge for subsistence while he was in custody.

What defects of form not to vitiate indictment, &c.

SEC. 15. No indictment shall be quashed or deemed invalid, nor shall the judgment or proceedings thereon be arrested or affected by reason of the omission or misstatement of the title, occupation, or estate or degree of the defendant, or of the name of the city, town, county or place of his residence, nor by reason of the omission of the words, "force and arms," nor by reason of omitting to charge any offence to have been committed contrary to the form of the statute or statutes, provided that such omission or misstatement do not tend to the prejudice of the defendant.

CHAPTER 149.

OF APPEALS, NEW TRIALS AND EXCEPTIONS IN CRIMINAL CASES.

Appeals from justices to circuit court.

SECTION. 1. Every person convicted before a justice of the peace of any offence, may appeal from the sentence to the circuit court then next to be held in the same county, and such appellant shall be committed to abide the sentence of said justice until he shall recognize to the state of Wisconsin in such reasonable sum with such sureties as said justice shall require, with condition to appear at the court appealed to, and there to prosecute his appeal and to abide the sentence of the court thereon, and in the mean time to keep the peace and be of good behavior.

Duty of justice on appeal, &c

SEC. 2. The justice, on such appeal, shall make a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance, if any shall be taken, to the clerk of the court appealed to; and the fees of the justice therefor shall be paid from the county treasury in like manner as other costs in criminal prosecutions are paid.

Appellant not to advance fees

SEC. 3. The appellant shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same; but if convicted in the circuit court, or if sentenced for failing to prosecute his appeal, he may be required, as part of his sentence, to pay the whole or any part of the costs of prosecution.

Proceedings if appeal is not prosecuted.

SEC. 4. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the circuit court may award sentence against him for the offence whereof he was convicted, in like manner as if he had been convicted thereof in that court. And if he is not then in custody, process may be issued to bring him into court to receive sentence.

Forfeiture accruing court to award it out of penalty paid.

SEC. 5. Whenever, upon suit brought upon any recognizance to prosecute an appeal, the penalty thereof shall be adjudged to be forfeited, or when by leave of the court such penalty shall have been paid to the county treasurer or to the clerk of the court, without a suit or before judgment shall be given in manner by law provided, if by law any forfeiture shall accrue to any person by reason of the offence of which the appellant was convicted, the court may award to him such sum as he may be entitled to out of such forfeiture.

New trials, when granted.

SEC. 6. The circuit court may, at the term in which the trial of any indictment shall be had, or within one year thereafter, or the supreme court within one year thereafter, on the petition or motion in writing of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it shall appear to the court that justice has not been done, and on such terms or conditions as the court may direct.

When exceptions to be allowed, &c.

SEC. 7. Any person who shall be convicted of an offence before the circuit court, being aggrieved by any opinion, direction or judgment of the court in any matter of law, may allege exceptions to such opinion, direction or judgment, which exceptions being reduced to writing in a summary mode, and presented to the court any time before the end of the term, and found conformable to the truth of the case, shall be allowed and signed by the judge, and thereupon all further proceedings in that court shall be stayed, unless it shall clearly appear to the judge that such exceptions are frivolous, immaterial or intended only for delay; and in that case judgment may be entered and sentence awarded in such manner as the judge may deem reasonable, notwithstanding the allowance of such exceptions.

Sec. 8. If upon the trial of any person who shall be convicted in said circuit court, any question of law shall arise, which in the opinion of the judge shall be so important or so doubtful as to require the decision of the supreme court, he shall, if the defendant desire it or consent thereto, report the case so far as may be necessary to present the question of law arising therein, and thereupon all proceeding in that court shall be stayed.

Judge when to make report of case to supreme court.

Sec. 9. Any person not being accused with an offence punishable with death, who shall file exceptions, or for whose benefit a report shall be made by the judge, as is provided in the two preceding sections, may recognize to the State of Wisconsin in such sum as the judge shall order, with sufficient sureties for his personal appearance at the supreme court at the then next term thereof, and to enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the mean time keep the peace and be of good behavior.

When and how accused may recognize in case of exceptions or report.

Sec. 10. If any person, so filing exceptions, or desiring a report to be made by the judge, shall not so recognize, he shall be committed to prison to await the decision of the supreme court; and in that case, the clerk of the court, in which the conviction was had, shall file a certified copy of the record and proceedings in the case in the supreme court, and the court shall have cognizance thereof and consider and decide the questions of law, and shall render such judgment, and award such sentence, or make such order thereon as law and justice shall require; and if a new trial is ordered, the cause shall be remanded to said circuit court for such new trial, but the proceedings here prescribed shall not deprive any party of his writ of error for any error or defect appearing of record.

Party refusing to recognize, to be committed, &c.

Party not deprived of his writ of error.

CHAPTER 150.

OF JUDGMENTS IN CRIMINAL CASES, AND THE EXECUTION THEREOF.

Section 1. In any case of legal conviction where no punishment is provided by statute, the court shall award such sentence as is according to the degree and aggravation of the offence not cruel or unusual, nor repugnant to the constitutional rights of the party.

Sentence where no punishment provided by statute.

Sec. 2. Every court before whom any person shall be convicted upon an indictment for any offence not punishable with death, or by imprisonment in the state prison or county jail, may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties, in a reasonable sum, to keep the peace or

Sureties to keep the peace, &c., when required.

CHAPTER 150.

to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he shall so recognize.

Forfeiture of recognizance.

SEC. 3. In case of the breach of the condition of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace.

Duty of clerk on conviction; sheriff to execute sentence.

SEC. 4. Whenever any person convicted of an offence shall be sentenced to pay a fine or costs, or to be imprisoned in the county jail or state prison, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be a sufficient authority for such sheriff to execute such sentence, and he shall execute the same accordingly.

Form of sentence to state prison; solitary imprisonment to precede hard labor.

SEC. 5. In every case in which the punishment of imprisonment in the state prison is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he shall also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such punishment the solitary imprisonment shall precede the punishment by hard labor unless the court shall otherwise order.

When no jail in county where offence committed.

SEC. 6. Whenever it shall appear to the court, at the time of passing sentence upon any convict who is to be punished by confinement in the state prison or county jail, that there is no jail in the county in which the offence was committed, suitable for the confinement of such convict, the court may order the sentence to be executed in any county in this state in which there may be a jail suited to that purpose; and the expenses of supporting such convict shall be borne, if such convict was sentenced to imprisonment in the county jail, by the county in which the offence was committed.

What county to pay expenses.

Proceedings on conviction for capital offence.

SEC. 7. When any person shall be convicted of any crime for which sentence of death shall be awarded against him, the clerk of the court, as soon as may be, shall make out and deliver to the sheriff of the county a certified copy of the whole record of the conviction and sentence, and the sheriff shall forthwith transmit the same to the governor; and the sentence of death shall not be executed upon such convict until a warrant shall be issued by the governor, under the seal of the state, with a copy of the record thereto annexed, commanding the sheriff to cause execution to be done, and the sheriff shall thereupon cause to be executed the judgment and sentence of the law upon such convict.

Warrant to be issued by governor.

Proceedings when convict insane or quick with child.

SEC. 8. If it shall appear to the satisfaction of the governor that any convict who is under sentence of death has become insane, the warrant for his execution may be delayed, or if such warrant has been issued, the execution thereof may be respited from time to time, so long as the governor shall think proper; and if any female convict who is under the sentence of death shall be quick with child, the governor shall forbear to issue a warrant for her execution, or if such warrant has been issued, the execution thereof shall be respited until it shall appear to the satisfaction of the governor that such female is no longer quick with child.

Sentence of

SEC. 9. The punishment of death shall in all cases be inflicted by hanging the convict by the neck until he be dead; and the sentence shall, at the time directed by the warrant, be executed at such place within said county as the sheriff shall select.

Death how executed.

SEC. 10. Whenever the punishment of death shall be inflicted upon any convict, in obedience to a warrant from the governor, the sheriff of the county shall be present at the execution, unless he shall be prevented by sickness or other casualty, and he may have such military guard as he may think proper; he shall return the warrant with a statement under his hand of his doings therein, as soon as may be after the said execution, to the governor, and shall also file in the clerk's office of the court where the conviction was had, an attested copy of the warrant and statement aforesaid; and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

Sheriff present at execution, &c.

To return warrant, &c.

CHAPTER 151.

OF PARDONS.

SECTION 1. In all cases in which the governor is authorized to grant pardons, he may, upon the petition of the person convicted, grant a pardon upon such conditions, and with such restrictions, and under such limitations as he may think proper, and he may issue his warrant to all proper officers, to carry into effect such conditional pardon, which warrant shall be obeyed and executed instead of the sentence, if any, which was originally awarded.

How governor may grant pardons, &c.

SEC. 2. Whenever any convict is pardoned by the governor, or his punishment is commuted, the officer to whom the warrant for that purpose is issued, after executing the same, shall make return thereof, under his hand, with his doings therein, to the governor, as soon as may be, and he shall also file with the clerk of the court, in which the offender was convicted, an attested copy of the warrant and return, a brief abstract, whereof the clerk shall subjoin to the record of his conviction and sentence.

Duty of officer when convict is pardoned or sentence commuted.

CHAPTER 152.

OF INQUESTS OF THE DEAD.

SECTION 1. Justices of the peace shall take inquests upon the view of the dead bodies of such persons as shall be supposed to have come to their death by violence; but no such inquest shall be taken when the death is believed to have been, and was evidently, occasioned by casualty.

Justices to take inquests.

SEC. 2. Whenever any justice of the peace shall have notice that the dead body of any person, supposed to have come to his

When to issue precept for jury.

death by violence, has been found within his county, he shall issue a precept to any constable of the county where such dead body is, requiring such constable forthwith to summon a jury of six good and lawful men of the county, to appear before him at the time and place specified in the precept, which precept shall be in substance as follows:

Form of same.

"The State or Wisconsin.

"To any constable of the county of ————.

"You are hereby required immediately to summon six good and lawful men of the county of ———— to appear forthwith before me at ————, in the town of ————, to inquire upon the view of the body of ————, there being dead, how and by what means he came to his death.

Given under my hand this ———— day of ————, 18—.

A. B.,
Justice of the Peace."

Duty of constable.

SEC. 3. Every constable to whom such precept shall be directed and delivered, shall forthwith execute the same, and make return of the precept, with his proceeding thereon, to the justice who issued the same.

Penalty on constable and jurors for neglect, &c.

SEC. 4. If any constable shall refuse or neglet to execute such precept, or to return the same as aforesaid, he shall forfeit and pay the sum of five dollars; and every person summoned as a juror as aforesaid, who shall fail to appear without having a reasonable excuse, shall forfeit and pay a sum not exceeding five dollars; such forfeiture may be recovered in the name of the state on the complaint of any person.

If jurors do not appear, others to be summoned.

SEC. 5. If six jurors shall not appear at the time and place appointed, the justice may require the constable to summon such number of jurors as shall make up the number of six; and when the requisite number so summoned shall appear, the justice shall there, in view of the dead body, administer to them on oath or affirmation in substance as follows:

Oath of jurors.

"You do solemnly swear that you will diligently inquire in behalf of the people of this state, when, in what manner, and by what means, the person whose body lies here dead, came to his death, and that you will return a true inquest thereof, according to your knowledge and such evidence as shall be laid before you."

Witnesses how subpœnaed, &c.

SEC. 6. The justice may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he shall therein direct; and the attendance of the persons so served with such subpœna may be enforced in the same manner, and they shall be subject to the same penalties as if they had been served with a subpœna in behalf of the people of this state to attend a justice's court; and it shall be lawful for the justice, taking such inquest in all such cases, to require by subpœna the attendance of one or more competent physicians or surgeons, for the purpose of making an examination of the body, and of testifying as to the result of the same.

Oath to witnesses.

SEC. 7. An oath or affirmation to the following effect, shall be administered to each witness by the justice of the peace: "You do solemnly swear that the evidence you shall give to this inquest, concerning the death of the person here dead, shall be the truth, the whole truth, and nothing but the truth."

When testimony reduced to writing, &c.

Sec. 8. In all cases where any murder or manslaughter is supposed to have been committed, the testimony of all witnesses examined before the inquest shall be reduced to writing by the justice of the peace, or some other person by his direction, and subscribed by the witnesses.

Jury to draw up inquisition, and what to contain.

Sec. 9. The jury, upon the inspection of the body, and after hearing the testimony of the witnesses, and making all needful inquiries, shall draw up and deliver to the justice of the peace, their inquisition under their hands, in which they shall find and certify, when, and in what manner, and by what means the deceased came to his death, and his name, if known, and if it shall appear that he came to his death by unlawful means, the jurors shall further state who was guilty, either as principal or accessory, or were in any manner the cause of his death, if known.

Form of inquisition.

Sec. 10. Such inquisition may be in substance in the following form:

"An inquisition taken at ——— in the county of ——— on the —— day of ———, 18—, before ———, one of the justices of the peace of the said county, upon the view of the body of ——— (or a person unknown,) there dead, by the jurors whose names are hereunto subscribed, who being duly sworn to inquire on behalf of the people of this state, when, in what manner, and by what means, the said ———, (or person unknown,) came to his death; upon their oaths do say," (here insert when, where, and in what manner, and by what means, persons, weapons, or instruments he was killed, or came to his death.)

"In testimony whereof the said justice of the peace, and the jurors of this inquest have hereunto set their hands, the day and year aforesaid."

Proceedings, when jury find murder, &c. committed.

Sec. 11. If the jury find that any murder, manslaughter, or assault has been commited upon the deceased, the justice of the peace shall bind over by recognizance, such witnesses as he shall think necessary, to appear and testify at the next court to be held in the same county at which an indictment for such offence may be found; and he shall also return to the same court the inquisition, written evidence and all recognizances and examinations by him taken, and may commit to the jail of the county, any witness who shall refuse to recognize in such manner as he shall direct.

When justice to issue warrant.

Sec. 12. If any person, charged by the inquest with having committed any such offence, shall not be in custody, the justice of the peace shall issue a warrant for his apprehension, and such warrant shall be made returnable before him, or any other magistrate, or court having cognizance of the case, who shall proceed thereon in the manner that is required of magistrates in like cases.

To bury dead body of stranger, &c.

Sec. 13. When any justice of the peace shall take an inquest upon the view of the dead body of a stranger, or, being called for that purpose, shall not think it necessary, on view of such body, that an inquest should be taken, he shall cause the body to be de-

CHAPTER 152. cently buried; and the said justice shall certify to all the charges incurred in taking any inquest by him, and to the expenses of burial of such dead body; and the same shall be audited by the board of supervisors of the proper county, and paid out of the county treasury.

TITLE XXXII.

CHAPTER 153.

OF PRISONS, OF THEIR MANAGEMENT AND DISCIPLINE, AND OF IMPRISONMENT FOR OFFENCES.

Jails used as prisons, and for what purposes.

SECTION 1. The common jails now erected, or which shall hereafter be erected in the several counties in the charge of the respective sheriffs, shall be used as prisons:

1. For the detention of persons charged with offences, and duly committed for trial:

2. For the detention of persons who may be duly committed to secure their attendance as witnesses on the trial of any criminal cause:

3. For the confinement of persons committed pursuant to a sentence, upon a conviction for an offence, and of all other persons duly committed for any cause authorized by law.

4. For the confinement of persons who may be sentenced to imprisonment in the state prison, until a suitable state prison shall be provided.

Proceedings when no jail in county.

SEC. 2. Whenever there is no jail erected in any county, every judicial or executive officer of such county, who shall have power to order, sentence or deliver any person to the county jail, may order, sentence or deliver such person to the jail of any adjoining county. And the jailer of any such adjoining county shall receive and keep such prisoner in the same manner as if he had been ordered, sentenced or delivered to him by any officer or court of his own county. The county from which such prisoner was taken, shall pay all the expenses of keeping and maintaining him in said jail.

What county to pay expense.

Expenses of convicts, &c, by whom paid.

SEC. 3. All charges and expenses for safe keeping and maintaining convicts, who have been sentenced to confinement in the state prison, shall be paid out of the treasury of the state yearly, the accounts of the keeper being first allowed by the board of county supervisors of the county where the convict shall be confined; and the expenses of safe keeping and maintaining persons charged with offences and duly committed for trial, and of those who are sentenced to confinement in the county jail, or who may he committed for the non-payment of any fine, shall be paid out of the treasury of the county; the accounts of the keeper being in like manner allowed by the board of county supervisors: Provided, that the state, nor any county shall ever pay more than two and a half dollars a week for the support of any person confined as aforesaid.

Inspectors of prisons; their duty.

SEC. 4. The county supervisors in the several counties shall be inspectors of the prisons in their respective counties, and shall visit them at least once in each year, and shall examine fully into the condition of each prison, as to health, cleanliness and discipline; and the keeper thereof shall lay before them a calendar, setting forth the name, age and cause of committal of each prisoner; and if it shall apear to the said inspectors that any of the provisions of law have been violated or neglected, they shall forthwith give notice thereof to the district attorney of the county.

Sheriff, &c, not to sell liquor, except, &c.

SEC. 5. No sheriff, jailer or keeper of any prison shall, under any pretence, give, sell or deliver to any person committed to prison for any cause whatever, any spirituous liquor, or any mixed liquor, part of which is spirituous, or any wine, cider or strong beer, unless a physician shall certify in writing that the health of such prisoner requires it, in which case he may be allowed the qnantity prescribed, and no more; and no sheriff, jailer or keeper as aforesaid, shall put or keep in the same room, male and female prisoners together.

Males and females not in same room.

Penalty for violating last section.

SEC. 6. If any sheriff, jailer or keeper of any prison shall sell or deliver to any prisoner in his custody, or shall willingly or negligently suffer any such prisoner to have any liquor, prohibited in the fifth section of this chapter, or shall place or keep together prisoners of different sexes, contrary to the provisions of the said fifth section, he shall in each case forfeit and pay for the first offence, the sum of twenty-five dollars; and such officer shall on a second conviction, be further sentenced to be incapable of holding the office of sheriff, deputy sheriff, jailer or keeper of any prison, for the term of five years.

Penalty for selling liquor.

SEC. 7. If any person other than is mentioned in the preceding section shall sell or deliver to any person committed for any cause whatever, any liquor, prohibited in this chapter, or shall have in his possession in the precincts of any prison, any such liquors, with intent to carry or deliver the same to any prisoner confined therein, he shall be punished by fine not exceeding fifteen dollars.

Prison to be kept clean, and prisoners how treated.

SEC. 8. The keeper of such prison shall see that the same is constantly kept in a cleanly and healthful condition, and shall see that strict attention is constantly paid to the personal cleanliness of all the prisoners in his custody, as far as may be, and shall cause the shirt of each prisoner to be washed once at least in each week. Each prisoner shall be furnished daily with as much clean water as he shall have occasion for, either as drink or for the purposes of personal cleanliness, and with a clean towel once a week, and shall be served three times each day with wholesome food, which shall be well cooked, and in sufficient quantity.

Prisoners to have bible, &c.

SEC. 9. The keeper of each prison shall provide, at the expense of the county, for each prisoner under his charge, who may be able and desirous to read, a copy of the Bible or New Testament, to be used by such prisoner at proper seasons during his confinement; and any minister of the gospel disposed to aid in reforming the prisoners, and instructing them in their moral and religious duties, shall have access to them at seasonable and proper times.

Sheriff to keep calendar, and what to contain.

SEC. 10. The sheriffs of the respective counties shall keep a true and exact calendar or register of all prisoners committed to any prison under their care, and the same shall be kept in a book to be provided by the county for that purpose: said calendar shall contain the names of all persons who shall be committed to prison, their places of abode, the time of their commitment, shall state the cause of their commitment, and the authority that committed them, and if they are committed for criminal offences, shall contain a description of their persons; and when any prisoner shall be liberated, said calendar shall state the time when, and the authority by which such liberation took place, and if any prisoner escapes, shall also state particularly the time and manner of said escape.

To return copy to court.

Sec. 11. At the opening of each session of the circuit court within his county, the sheriff shall return a copy of said calendar under his hand, to the judge holding said court; and if any sheriff shall neglect or refuse so to do, he shall be punished by fine not exceeding three hundred dollars.

Jails how constructed, &c.

Sec. 12. In the jails erected, or which shall be hereafter erected in this state, there shall be provided sufficient and convenient apartments for confining prisoners not criminal separate from felons and other criminals, and also for confining persons of different sexes, separate and apart from each other.

Sentence of solitary confinement how executed.

Sec. 13. Whenever any person shall be duly sentenced to solitary imprisonment, and confinement at hard labor in the state prison, or either of them, the sheriff of the proper county is required to execute such sentence of solitary imprisonment until a suitable state prison shall be provided, by confining such convict in one of the cells of the jail, or if there be no such cell, then in the most retired and solitary part of the jail; and during the time of such solitary imprisonment, the convict shall be fed with bread and water only, unless other food shall be necessary for the preservation of his health; and no intercourse shall be allowed with such convict during such confinement, except for the conveyance of food and other necessary purposes.

When sheriff to furnish tools &c. to prisoners.

Sec. 14. Whenever any person shall be confined in any jail, pursuant to the sentence of any court, if such sentence or any part thereof shall be that he be confined at hard labor, the sheriff of the county in which such person shall be confined, shall furnish such convict with suitable tools and materials to work with, if in the opinion of the said sheriff, the said convict can be profitably employed, either in the jail, or yard thereof, and the expense of said tools and materials shall be defrayed by the county in which said convict shall be confined, and said county shall be entitled to his earnings.

Unruly prisoner how treated.

Sec. 15. Whenever any person committed to prison for any cause whatever, shall be unruly or shall disobey any of the regulations established for the management of prisons, the sheriff or keeper may order such prisoner to be kept in solitary confinement and fed on bread and water only, as is provided in the thirteenth section of this act, for a period not exceeding twenty days for each offence.

Bedding and clothing, &c., to be furnished.

Sec. 16. The keeper of each prison shall furnish necessary bedding, clothing and fuel and medical aid, for all prisoners who shall be in his custody, and shall be paid therefor according to the provisions of the third section of this chapter, and such payment shall not be deducted from the sum he is entitled to receive, for the weekly support of the prisoners, according to the provisions of said third section.

Penalty for escaping from prison

Sec. 17. If any person who may be in any prison, under sentence of imprisonment in the state prison, shall break prison and escape, he shall be punished by imprisonment in the state prison for the term of one year, in addition to the unexpired term for which he was originally sentenced.

Ib.

Sec. 18. If any person who may be imprisoned, pursuant to a sentence of imprisonment in the county jail, or any person who shall be committed for the purpose of detaining him for trial, for any offence not capital, shall break prison and escape, he shall be imprisoned in the county jail for the term of six months.

Ib.

Sec. 19. If any person who shall be committed to prison for the purpose of detaining him for trial for a capital offence, shall break prison and escape, he shall be imprisoned in the state prison for the term of two years.

Prisoners removed in case of fire.

Sec. 20. If any prison or any building near thereto shall be on fire, and the prisoners shall be exposed to danger by such fire, the keeper may remove such prisoners to a place of safety, and there confine them so long as may be necessary to avoid such danger; and such removal and confinement shall not be deemed an escape of such prisoners.

Convict imprisoned for non-payment of fine, how liberated.

Sec. 21. When any poor convict shall have been confined in any prison for the space of six months, for the non-payment of fine and costs only, or either of them, the sheriff of the county in which such person shall be imprisoned, shall make a report thereof to any two justices of the peace for such county; if required by such justices, the said keeper shall bring such convict before them, either at the prison or at such other convenient place thereto as they shall direct. The said justices shall proceed to inquire into the truth of said report, and if they shall be satisfied that such report is true, and the convict has not had since his conviction, any estate real or personal, with which he could have paid the sum for the non-payment of which he was committed, they shall make a certificate thereof to the sheriff of the county, and direct him to discharge such convict from prison, and the sheriff shall forthwith discharge him.

Duty of sheriffs, jailers, &c., in relation to persons committed under authority of United States.

Sec. 22. All sheriffs, jailers, prison-keepers, and their and each and every of their deputies, within this state, to whom any person or persons shall be sent or committed, by virtue of legal process issued by or under the authority of the United States, shall be, and they are hereby enjoined and required to receive such persons into custody, and to keep them safely until they be discharged by due course of the laws of the United States; and all such sheriffs, jailers, prison-keepers and their deputies offending in the premises, shall be liable to the same pains and penalties, and the parties aggrieved shall be entitled to the same remedies against them, or any of them, as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this state.

Penalty for neglect.

Charges to be paid by United States.

Sec. 23. The United States shall be liable to pay for the support and keeping of said prisoners the same charges and allowances as are allowed for the support and keeping of prisoners committed under the authority of this state.

Duty of sheriffs, jailers, &c., relative to making out and transmitting calendar of prisoners, &c.

SEC. 24. Before every stated term of the United States court to be held within this state, the said sheriffs, jailers and prison-keepers shall make out, under oath, a calendar of prisoners in their custody under the authority of the United States, with the date of their commitment, by whom committed and for what offence, and transmit the same to the judge of the District Court of the United States for this district: and at the end of every six months they shall transmit to the United States marshal for this district, for allowance and payment, their account, if any, against the United States, for the support and keeping of such prisoners as aforesaid.

TITLE XXXIII.

OF THE PUBLICATION OF THE REVISED STATUTES AND THE TIME WHEN THEY TAKE EFFECT, AND OF THE REPEAL OF FORMER STATUTES.

CHAPTER 154. Of the publication of the Revised Statutes.
155. Of the superintendence of the publication of the Revised Statutes.
156. Of the taking effect, repeal and publication of certain acts.
157. Of the time when the Revised Statutes shall go into operation, and the repeal of the acts and parts of acts enumerated in this chapter.

CHAPTER 154.

OF THE PUBLICATION OF THE REVISED STATUTES.

Revised statutes, how published and what to contain.

SECTION 1. The Revised Statutes of this state shall be published in one volume, large octavo, on new small pica type, and on paper of good book quality, bound in calf, in the modern style of law book binding; and shall contain such matter besides the general and permanent laws of the state, and such marginal notes and index as shall hereafter be prescribed in the law arranging the publication, and directing the superintending of such publication.

Copyright, to whom granted, how long and on what terms.

SEC. 2. The copy right of the Revised Statutes is hereby secured, for the space of two years, to the commissioners to revise the laws, or some suitable person to be selected by them, for the purpose of publication; provided, the commissioners or the person so selected, shall within twenty days after the passage of this act, execute to the governor of this state a bond, in the penal sum of ten thousand dollars, with two or more sureties to be approved by said governor, conditioned for the faithful publication of the work, and its delivery to the state, as hereinafter directed, agreeably to the provisions of this act.

Governor to subscribe for 4000 copies, and at what price.

SEC. 3. The governor of this state is authorized and required, in the name of the state of Wisconsin, to subscribe for, and take, when printed, bound and completed, as herein provided, four thousand copies, to be deposited in the state library, subject to be distributed, as is or may hereafter be provided by law, of the said Revised Statutes, for the use of the state, at a sum not exceeding one dollar and seventy-five cents per volume; provided, however, if the said volume shall exceed seven hundred pages, the sum of twenty-five cents additional per volume, for every hundred pages of excess over the above mentioned number of seven hundred pages, and proportionably for a less number of excess, shall be allowed.

SEC. 4. The said contractor is required, in addition to the number contracted for by the state, to publish at least two thousand copies of said statutes, additional; and in the sale of said additional copies he is hereby restricted in price, to a sum not in the whole amount to exceed four dollars per copy.

Contractor to publish 2000 copies additional; price therefor.

SEC. 5. The said revised statutes shall be printed, bound, and completed, and delivered at the seat of government of this state, on or before the first day of December next, and the governor of this state is hereby authorized to receive and accept of the said statutes so delivered, if he shall be of the opinion that the work has been done according to contract, and the requirements of this act; if in his opinion the work has not been so executed, he shall not accept of the same; and should the governor accept of the same, he is hereby authorized and directed to deliver to said contractor a receipt for the same, and to cancel his bonds.

When to be completed and delivered; governor authorized to accept of same, &c.

SEC. 6. Said contractor in the publication of the work herein directed, shall be subject in the arrangement of the work, its side notes, index, and general character, to the direction of the person or persons who may be appointed by the legislature to superintend said work.

Contractor to be subject to direction of commissioner, in the publication.

SEC. 7. The secretary of state is hereby authorized and directed to furnish to the person or persons appointed to prepare and superintend the publication of said statutes, accurate copies of the laws to be embodied in said work, which may be deposited in his office; and the said person or persons so appointed to superintend said publication, is, or are hereby directed to put said copies into the hands of the person or persons appointed to publish said revised statutes, as rapidly as said copies can be prepared for press.

Secretary of state to furnish copy of laws to commissioner, and he to contractor.

CHAPTER 155.

OF THE SUPERINTENDENCE OF THE PUBLICATION OF THE REVISED STATUTES.

SECTION 1. The several laws of a general, public, and permanent nature, passed at the present session of the legislature, shall be published in one volume, to be designated the "Revised Statutes," and in such publication the enacting clause of the first chapter shall be retained, but the enacting clause of each subsequent chapter or act, and the signatures of the governor and the presiding officers of the legislature, and the date of approval, shall be omitted.

What laws to be published in the revised statutes, and how.

SEC. 2. All acts and parts of acts, of a general and permanent nature, passed previous to the present session of the legislature, which are not repealed or incorporated in the revised statutes, shall be published as an appendix, and bound in the volume of the revised statutes.

What in the appendix.

SEC. 3. The Declaration of Independence, the constitution of the United States and its amendments, and the constitution of this state, shall preface the revised statutes, and the ordinance of July 13th, 1787, the act establishing the territorial government of

Ib., and what to preface the revised statutes.

Wisconsin, and the acts amendatory thereof, the act authorizing the people of Wisconsin territory to form a constitution and state government, the act for the admission of this state into the Union, and an abstract of the laws of the United States in relation to the naturalization of aliens and prescribing the mode in which the public acts, records, and judicial proceedings in each state shall be authenticated, shall be published in the appendix to the revised statutes.

How revised statutes to be arranged and published.

SEC. 4. The laws composing the revised statutes, shall be arranged in parts and chapters, with appropriate titles at the head of each chapter, which shall also be indicated by suitable words on the top margin of each page; and the chapters shall be numbered in order from the beginning to the end of the volume.

Duties of commissioner in respect to the publication.

SEC. 5. The commissioner appointed to superintend the publication of the revised statutes, shall arrange the order of publication, distributing the chapters into parts and titles as he may deem proper; he shall prepare suitable marginal notes and a full index, examine and correct the proof sheets, and cause all clerical and typographical errors to be corrected so far as he may discover the same.

May re-arrange and transpose sections.

SEC. 6. Such commissioner, in preparing the laws for publication, may re-arrange the order of the sections in any chapter, or transpose any section from one act or chapter to another act or chapter, whenever it will not alter the intent and meaning of the law, and the proper order of arrangement shall require it.

May correct errors, and how.

SEC. 7. He may also correct errors which have occurred in numbering the chapters or sections, and in any references made thereto and shall insert the proper numbers and references in the printed volume, and words, inserted or omitted in the enrolled acts by clerical mistakes, may be omitted or supplied without brackets, but in every such case such corrections shall be inserted at the end of the volume.

Appointment of commissioner, his compensation and how paid.

SEC. 8. Charles M. Baker is hereby appointed the commissioner to superintend the publication of the revised statutes in accordance with the provisions of this act, and shall receive as compensation therefor such sum as may be agreed upon between him and the person or persons appointed under the act approved March 17th, 1849, to publish said statutes not to exceed six hundred dollars, which sum shall be paid by such person or persons as aforesaid, and in no wise to be a charge upon or against the state.

Secretary of state to copy laws; to employ clerks, their compensation and how paid

SEC. 9. It shall be the duty of the secretary of state to cause to be copied the several chapters composing the revised statutes, and all other laws which are required to be published therewith, and to furnish them to the said commissioner, within thirty days of the close of the present session of the legislature, and he is hereby authorized to employ such clerk or clerks as may be necessary to accomplish the work within the time specified: Provided, no such clerk so employed shalll receive a compensation of more than two dollars per day, nor shall such expense for copying exceed in the aggregate more than two hundred and fifty dollars, which sum shall be paid by the person or persons having the copyright.

Certificates by secretary of state and commissioner, and effect of same.

SEC. 10. The copies of all laws which are required to be furnished by the secretary of state, as provided in the preceding section shall be certified by him to be true copies of the originals deposited in his office, and the said commissioner shall certify that the printed chapters and acts contained in the volume of revised statutes are correctly published from such certified copies, with the exception of such corrections of clerical errors and mistakes as are authorized in this chapter to be made, which certificate shall be prefixed to said statutes, and shall be deemed in all courts and places a sufficient authentication of the several chapters and acts contained in the volume of the revised statutes.

Commissioner to furnish copy.

SEC. 11. It shall be the duty of said commissioner to furnish the person or persons appointed as aforesaid to publish the revised statutes, with copy for printing as rapidly as the same will be needed.

Revised statutes how delivered and distributed; balance to be deposited in state library, &c.

SEC. 12. The revised statutes, when published and delivered as provided by law, shall be distributed and delivered over by each public officer to his successor, in the same manner as the session laws of this state are required to be delivered and distributed, and under the same penalties, but no distribution shall be made to any district attorney, coroner, justice of the peace, or town superintendent of common schools, and the balance which shall be left shall be deposited in the state library, and be kept for distribution to the public officers entitled to the same in new towns and counties, as the same shall be required.

If vacancy in office of commissioner, governor to appoint.

SEC. 13. If a vacancy shall occur in the office of commissioner for superintending the publication of the revised statutes, the governor of this state may appoint some suitable person to supply his place.

Publication of this chapter, &c; to be printed with revised statutes.

SEC. 14. This act shall be published forthwith in a newspaper printed in Madison, and the secretary of state is herein directed to furnish some newspaper with an authenticated copy of the same, and it shall take effect from and after such publication, and shall be printed in the volume of the revised statutes.

Certain acts repealed.

SEC. 15. The act entitled "an act to provide for revising the statute laws of this state," approved July 13th, 1848, and the act entitled "an act for the appointment of commissioners to revise and simplify the rules of practice in courts," approved August 19th, 1848, are hereby repealed.

CHAPTER 156.

OF THE TAKING EFFECT, REPEAL AND PUBLICATION OF CERTAIN ACTS.

Certain acts when to take effect.

SECTION 1. The following acts passed at the present session of the legislature shall take effect and be in force from and after the first day of May next, to wit:

Of the assessment and collection of taxes.

Of the incorporation of companies to construct plank and turnpike roads.

In relation to the formation of corporations for manufacturing, mining, lumbering, mechanical and chemical purposes.

Of the incorporation of villages.

CHAPTER 156.

Of the incorporation of cemetery associations.

Of state officers.

Of counties and county officers.

Of elections other than for town officers.

Of towns and town officers.

Of highways and bridges.

Of the organization of county courts.

An act relating to interest.

An act to prescribe the terms of the supreme court, and to require the adoption of rules of practice.

An act to amend an act entitled an act to prescribe the mode of proceeding in chancery.

An act relating to the sale of spirituous liquors.

Duty of governor to cause certain acts to be copied, published and distributed, &c.

SEC. 2. It shall be the duty of the governor to appoint some person to make correct copies of the several acts mentioned in this act which are required to be printed, and to take effect as herein provided, and it shall be the further duty of the governor to cause to be printed in a newspaper or newspapers, so many of each of the aforesaid acts as shall be equivalent to thirty copies of each act for each county in the state: Provided, that any such newspaper shall not contain less than an entire copy of one of the aforesaid acts; and the governor shall cause the said newspapers containing such acts to be transmitted to the clerks of the boards of supervisors in each county, in proportion to the population of such counties, as near as practicable; and such clerks, upon receiving such newspapers as aforesaid, shall immediately make an equal distribution of each of the afore mentioned acts among the several towns in his county, and transmit such newspapers to the town clerks of such towns.

When act entitled "of common schools" to take effect; duty of state superintendent in relation to publishing and distributing same.

SEC. 3. The act passed at the present session of the legislature entitled, "Of common schools," shall take effect and be in force from and after the first day of May next, and the state superintendent is required to cause to be printed in pamphlet form, by the person authorized to do the printing of the legislature, four thousand copies of the said act, "of common schools," together with such necessary forms and instructions for the use of school officers, as the state superintendent may deem proper; and it shall be the duty of the state superintendent, when said act shall have been printed as before mentioned, to cause such number thereof, as may be necessary to supply each school district with a copy of the same, to be transmitted to the clerk of the board of supervisors of each county to be distributed by such clerks among the several towns in their county, as the state superintendent shall direct; and the state superintendent shall deposit the residue of such acts in his office to be distributed by him from time to time to such school districts in the state as are unsupplied with a copy of such act.

Repeal of certain acts.

SEC. 4. The following acts passed in the years herein mentioned, shall be repealed and cease to be in force from and after the first day of May, 1849, to wit:

Acts passed in the year 1841.

An act to amend an act entitled an act in relation to collectors, assessors, and supervisors of roads.

An act to provide for the government of the several towns in this territory, and for the revision of county government.

An act to amend an act entitled an act to provide for the support of common scoools and for other purposes.

An act to amend and define the act entitled an act to provide for the government of the several towns in this territory, and for the revision of county government, approved February 18, 1841.

Acts passed in the year 1843.

An act to amend an act entitled an act to provide for the government of the several towns in this territory, and for the revision of county government.

An act for laying of private roads, and of the alteration and discontinuance thereof.

Acts passed in the year 1845.

An act to amend an act entitled an act to provide for the government of the several towns in this territory, and for the revision of county government.

An act to amend an act for opening and repairing or vacating public roads and highways, and amendatory acts thereto.

Acts passed in the year 1846.

An act to amend an act entitled an act to provide for the government of the the several towns in this territory, and for the revision of county government, and for other purposes.

Acts passed in the year 1847.

An act to amend an act entitled an act to provide for the government of the several towns in this territory, and for the revision of county government, and for other purposes.

Acts passed in the year 1848.

An act to amend an act entitled an act to amend an act entitled an act to provide for the government of the several towns in this territory, and for the revision of county government.

An act to authorize special town meetings in certain cases.

An act to amend an act entitled an act to prescribe township and county government, approved February 18, 1841.

Acts published in the "Statutes of the Territory of Wisconsin," to wit:

An act to provide for and regulate general elections.

An act for assessing a county revenue.

Acts passed in the year 1841.

An act to amend an act entitled an act for assessing and collecting county revenue.

An act supplementary to the several acts relating to assessing and collecting county revenue.

Acts passed in the year 1844.

An act to provide for the election of clerks of the boards of supervisors, and for other purposes.

Acts passed in the year 1846.

An act defining the time for taking appeals from the vote of school meetings, and for other purposes.

An act to provide for the collection of delinquent taxes on personal property, in certain cases.

An act to amend the fourth section of an act entitled an act to amend an act for assessing and collecting county revenue, approved February 19, 1841.

Acts passed in the year 1847.

An act to amend an act to provide and regulate general elections.

Acts passed in the year 1848.

An act to amend an act entitled an act to amend an act entitled an act for assessing and collecting county revenue.

An act to prescribe the duties of the state treasurer.

An act concerning notaries public.

An act prescribing the powers and duties of the secretary of state.

An act to provide for the election and to define the duties of state superintendent of public instruction.

An act to provide for the election of clerks of the circuit courts in this state.

An act reducing the fees of registers of deeds.

An act to provide for holding general and special elections, the time when and the manner of holding the same, and the qualifications, disabilities and privileges of electors.

An act relative to public schools.

An act to authorize the construction of turnpike and plank roads.

State printer required to publish certain laws

SEC. 5. The state printer is hereby required to publish in the session laws of 1849, an act in relation to school and university lands, the sales thereof and the investment of the funds arising therefrom; also all acts and parts of acts of a local and private nature, as well as those of a general and public nature, which were passed at the present session of the legislature, excepting, however, all other acts and parts of acts which were reported by the commissioners to revise the laws, and by the joint committee on the compilation thereof.

Secretary of state to cause this act to be published

SEC. 6. It shall be the duty of the secretary of state, immediately after the passage of this act, to cause the same to be published in accordance with the constitution of this state.

CHAPTER 157.

OF THE TIME WHEN THE REVISED STATUTES SHALL GO INTO OPERATION, AND THE REPEAL OF THE ACTS AND PARTS OF ACTS ENUMERATED IN THIS CHAPTER.

When revised statutes, &c. take effect.

SECTION 1. All the provisions contained in the Revised Statutes and in this chapter, shall take effect and go into operation, unless otherwise specially provided for by law, from and after the first day of January, 1850; and from and after the day last mentioned, the following acts and parts of acts heretofore passed by the legislative assembly of the territory of Wisconsin, at a session commencing in November, 1838, and at an adjourned session commencing in January, 1839, and denominated "Statutes of the Territory of Wisconsin," shall be repealed, and also all other acts and parts of acts in this chapter specified, to wit:

Acts and parts of acts passed in 1838 and 1839 repealed.

An act concerning the time when acts shall take effect.

An act to provide for the printing and distribution of the laws of Wisconsin.

An act concerning the construction of statutes.

An act to provide for and regulate general elections.

An act to provide for a territorial revenue.

An act for assessing and collecting county revenue.

An act to prescribe the tenure of office of auctioneers, and to levy a duty upon sales at auction in certain cases.

An act relating to the militia.

An act to provide for the appointment of a territorial treasurer, and to define his duties.

An act relative to the office and duties of the auditor of the territory of Wisconsin.

An act to provide for the appointment of a librarian, and for other purposes.

An act concerning the appointment of public administrators, and their duties.

An act concerning notaries public.

An act concerning the clerks of courts.

An act concerning sheriffs.

An act concerning coroners and constables.

An act concerning the attorney general and district attorneys.

An act concerning masters in chancery.

An act concerning supreme court commissioners.

An act relating to supreme court commissioners.

An act to provide for the election of county treasurers, and to define their duties and powers.

An act concerning district surveyors.

An act to provide for the election of registers of deeds, and to define their duties and powers.

An act to define the general powers of counties, and for other purposes.

An act organizing a board of county commissioners in each county of this territory.

An act for opening and repairing, or vacating, public roads and highways.

An act concerning fences and fence viewers.

An act to permit certain animals to run at large.

An act relating to strays.

An act to prevent stallions in certain cases from running at large.

An act respecting marks and brands for horses, cattle, sheep and hogs.

An act regulating fisheries.

An act to regulate ferries.

An act regulating taverns and groceries.

An act to provide for the preservation of the public health.

An act to provide for the inspection of certain articles therein mentioned.

An act to establish the rate of toll for grinding.

An act for the relief of the poor.

An act concerning apprentices and servants.

An act to secure religious societies within this territory in the possession of their churches, and other property.

An act to establish common schools.

An act regulating marriages.

An act concerning divorce.

An act concerning the lien of mechanics and others for the cost of repairs and improvements on real estate.

An act to restrain unauthorized banking, and for other purposes.

An act concerning corporations.

An act to prevent forcible entries and detainers.

An act relative to limited partnerships.

An act relating to interest.

An act concerning seals.

A resolution relative to seals.

An act relative to the sessions of the legislative assembly.

An act to legalize the acts of certain officers.

Resolutions to authorize the location of a portion of the University lands.

An act to provide for the destruction of wolves.

An act to provide for recording town plots.

An act to prevent fraudulent conveyances and contracts, relative to real and personal property.

An act concerning the writ of attachment.

An act to provide for the collection of demands against boats and vessels.

An act concerning insolvent debtors.

An act for relief of persons confined in jail on civil process.

An act concerning bills of exchange and promissory notes.

An act to regulate weights and measures.

An act concerning the tenure of real property, the persons capable of holding and conveying, and the manner of transmitting the title thereto.

An act to amend an act entitled "An act in relation to the evidences of title to lands in the territory of Wisconsin."

An act concerning the supreme and district courts.

An act to amend the act entitled, "An act concerning the supreme and district courts, and defining their jurisdiction and powers."

An act relating to the judicial districts.

An act concerning proceedings of courts of record.

An act concerning the writ of habeas corpus.

An act concerning judgments and executions.

An act concerning oaths.

An act concerning testimony and depositions.

An act concerning the action of ejectment.

An act concerning amendments.

An act concerning the time of commencing actions.

An act concerning bail.

An act concerning grand and petit jurors.

An act concerning replevin.

An act concerning set-offs.

An act requiring certain officers to keep their offices at the county seat.

An act concerning arbitrations.

An act to prescribe the mode of proceeding in chancery.

An act establishing courts of probate, defining their jurisdiction and powers, and directing the settlement of estates therein.

An act concerning executors, administrators and guardians.

An act concerning justices of the peace.

An act concerning the admission of attorneys at law.

An act concerning the rights of persons who are accused of crimes and offences.

An act to provide for the punishment of offences against the lives and persons of individuals.

An act to provide for the punishment of offences against the public health.

An act to provide for the punishment of offences against private property.

An act to provide for the punishment of forgery and counterfeiting.

An act to provide for the punishment of offences against public justice.

An act to provide for the punishment of offences against public policy.

An act to provide for the punishment of offences against chastity, morality and decency.

An act to provide for the punishment of offences against the public peace.

An act to provide for the arrest and examination of offenders, commitment for trial and taking bail.

An act to regulate indictments and proceedings in criminal cases before trial.

An act to provide for the trial of criminal cases.

An act to provide for appeals, new trials and exceptions in criminal cases.

An act respecting judgments in criminal cases, and the execution thereof.

An act to prevent the commission of crimes.

CHAPTER 157. An act making general provisions concerning crimes and punishments.

An act regulating the management of prisons.

An act concerning costs and fees.

An act to repeal certain acts therein named.

An act to repeal the acts therein mentioned.

Acts passed in 1839—40.

Acts of a General nature passed by the Legislative Assembly at its Annual Session of 1839–40, *to wit:*

An act to amend an act entitled, "an act to provide for and regulate general elections."

An act to amend an act entitled, "an act to provide for a territorial revenue."

An act to provide for recording contracts relating to lands, and for other purposes.

An act to prevent trespass and other injuries being done to the possession of settlers on the public lands, and to define the right of possession on such lands.

An act to amend an act entitled, "an act relating to the militia."

An act to amend an act concerning justices of the peace.

An act to amend an act of the statutes of 1839, entitled, "an act concerning the supreme and district courts."

An act to provide for laying out and opening territorial roads, and for other purposes.

An act to amend an act entitled, "an act concerning the time of commencing actions."

An act concerning actions relating to real property.

An act in relation to collectors, assessors, and supervisors of roads.

An act relative to the expenses of the adjutant general's office.

An act to amend an act of the statutes of the territory of Wisconsin, entitled "an act concerning costs and fees."

An act to amend an act entitled, "an act to prescribe the mode of proceeding in chancery, and for other purposes."

An act for the relief of insolvent debtors.

An act to provide for the appointment of agents to demand fugitives from justice, and for issuing search warrants.

An act to incorporate and regulate public libraries.

An act in relation to mills and mill dams.

An act limiting the term of office of all officers of this territory, not now limited by law.

An act in relation to suits in favor of the territory.

An act to provide for the support of common schools, and for other purposes.

An act relating to strays.

An act concerning the duties of clerks of the boards of county commissioners.

Acts of a general nature passed by the Legislative Assembly at its August Session, 1840, *and its Annual Sesssion,* 1840—41, *to wit:*

CHAPTER 157
Acts passed in 1840—41.

An act to amend an act entitled, "an act to provide for the support of common schools," and for other purposes.

An act supplementary to an act entitled, "an act relating to the militia."

An act to provide for the support of illegitimate children.

An act to amend an act entitled, "an act for assessing and collecting county revenue."

An act supplemental to the act concerning testimony and depositions.

An act to amend an act to provide for the punishment of offences against private property.

An act to amend an act of the revised statutes of Wisconsin territory, entitled, "an act concerning judgments and executions."

An act prescribing the tenure of office of certain county officers, and for other purposes.

An act declaring rivers navigable for certain purposes.

An act to amend an act to establish the rate of toll for grinding.

An act concerning the supreme court.

An act in relation to courts of equity.

An act relating to sheriffs.

An act limiting the writ of error, and for other puposes.

An act relating to trunks, baggage, and other unclaimed personal property.

An act concerning the supreme and district courts.

An act to apportion the members of the House of Representatives to the several counties of the territory.

An act to restrain pedlers and other persons from trading without license.

An act to amend an act entitled, "an act in relation to collectors, assessors and supervisors of roads."

An act relative to the duties of the secretary of the territory.

An act to amend an act entitled, " an act concerning grand and petit jurors," and an act entitled, "an act to provide for the trial of criminal cases."

An act relating to fines and forfeitures.

An act supplementary to the several acts relating to the Milwaukee and Rock river canal.

An act changing the boundary lines of certain counties.

An act to incorporate medical societies, and for the promotion of medical science.

An act to amend an act entitled, " an act to provide for the support of common schools and for other purposes."

An act supplementary to the several acts relating to assessing and collecting county revenue.

An act to provide for the government of the several towns in this territory, and for the revision of county government.

CHAPTER 157.

Acts passed in 1841—42.

Acts of a general nature passed by the Legislative Assembly at its Annual Session, commencing on the sixth day of December, A. D. 1841, *and ending February nineteenth, A. D.* 1842, *to wit:*

An act to repeal an act entitled, "an act concerning the lien of mechanics and others for the cost of repairs and improvements on real estate."

An act to amend the act of the revised statutes entitled, "an act concerning the writ of attachment."

An act to provide for preserving in the library the acts and journals of the legislative assembly.

An act to amend the act of the revised statutes concerning the supreme and district courts.

An act declaratory of an act entitled, "an act prescribing the terms of office of certain county officers, and for other purposes."

An act to amend the several acts to provide for the support of common schools.

An act to provide for the taking the census of the inhabitants of the territory of Wisconsin, and to authorize the governor to apportion the members of the council and house of representatives.

An act concerning the partition of lands.

An act to amend the act concerning grand and petit jurors.

An act to abolish imprisonment for debt.

An act to provide for the security of the property appertaining to the legislative assembly.

An act to amend and define the act entitled, "an act to provide for the government of the several towns in this territory, and for the revision of county government," approved February 18, 1841.

Acts passed in 1843.

Acts of a general nature, passed by the fourth Legislative Assembly during the session terminating on the twenty-sixth day of March, and that terminating on the seventeenth day of April, 1843, *to wit:*

An act to change the time of holding courts in certain counties of the second judicial district, and to provide for a change of venue in criminal cases.

An act fixing the time of holding the annual session of the legislative assembly, and for other purposes.

An act to provide for the election of sheriffs, judges of probate, and justices of the peace.

An act to regulate the fees of clerks in cases of naturalization.

An act in relation to the duties of certain territorial officers.

An act to provide for punishing the crime of embezzlement by public officers.

An act to amend an act entitled "an act to provide for the government of the several towns in the territory, and for the revision of county government."

The laying out of public and private roads, and of the alteration and discontinuance thereof.

An act authorizing the governor to offer rewards for the apprehension of criminals in certain cases.

An act to amend the statutes of this territory relative to sales of land under execution or mortgage, and to legalize certain conveyances.

An act to provide for levying and collecting a territorial revenue.

An act to repeal certain parts of the several acts concerning the militia, and for other purposes.

An act to amend an act entitled "an act to change the time of holding courts in certain counties of the second judicicial district, and to provide for a change of venue in criminal cases," and for other purposes.

An act concerning removals from office.

Acts passed in 1843—44.

Acts of a General Nature, passed by the fourth Legislative Assembly, commencing on the third day of December A. D., 1843, *and ending January, A. D.,* 1844, *to wit:*

An act to ascertain the indebtedness and the taxable property of the territory.

An act relating to real actions, and for other purposes.

An act to amend an act entitled "an act concerning justices of the peace," and for other purposes.

An act to provide for the election of clerks of the board of supervisors, and for other purposes.

An act relating to the district courts in the second and third judicial districts, and for other purposes.

An act supplementary to an act to provide for the punishment of offences against the public peace.

An act to punish trespass on lands.

An act to change the time for holding the annual meetings of the several boards of county supervisors.

An act to amend an act entitled an act concerning costs and fees.

An act to prevent disturbances and interruption at camp meetings.

An act to amend "an act to prescribe the mode of proceeding in chancery."

An act to enable school districts to raise taxes.

An act to amend the act concerning proceedings in courts of record, and for other purposes.

Acts passed in 1845.

Acts of a General Nature, passed by the fourth Legislative Assembly, during the session commencing on the 6*th day of January, A. D.* 1845, *and ending on the twenty-fourth day of February, A. D.* 1845, *to wit:*

An act to amend an act entitled "an act to provide for the government of the several towns in this territory," and for the revision of county government.

An act amending an act entitled "an act regulating taverns and groceries."

An act to extend the jurisdiction of judges of probate.

An act in relation to tax certificates, lost or destroyed.

An act for the protection of sheep, and for other purposes.

An act to abolish the office of supreme court commissioner.

An act concerning the duties of clerks of the boards of county

CHAPTER 157 commissioners and county supervisors in relation to unredeemed tax lands.

An act relating to county treasurers.

An act to amend an act entitled "an act to provide for the support of illegitimate children," approved February 17, 1841.

An act to amend an act entitled "an act concerning executors, administrators and guardians"

An act to amend "an act for opening and repairing or vacating public roads and highways, and the amendatory acts thereto."

An act to amend an act entitled "an act to prevent the sale of intoxicating liquors to Indians, approved January 8, 1840."

An act concerning the returns of elections in certain counties therein named.

An act relating to constables' fees.

Acts passed in 1846.

Acts of a General Nature, passed by the fifth Legislative Assembly at the Annual Session, commencing on the fifth day of January, and ending on the third day of February, A. D. 1846, *to wit:*

An act to provide for the more convenient mode of contesting the election of county and other officers.

An act relating to the purchase and redemption of real estate sold on execution.

An act to amend the several acts of this territory concerning the supreme and district courts.

An act defining the time for taking appeals from the vote of school meetings, and for other purposes.

An act to amend the election law concerning justices of the peace, and for other purposes.

An act to amend an act entitled "an act concerning masters in chancery."

An act to amend an act entitled "an act to provide for the government of the several towns in this territory and for the revision of county government, and for other purposes."

An act to amend an act entitled "an act concerning divorce."

An act giving further time to appeal from the decision of judges of probate.

An act to repeal certain acts therein named and to revive the act of the Revised Statutes entitled "an act relating to the militia."

An act relating to coroners.

An act to provide for the collection of delinquent taxes on personal property in certain cases.

An act to amend the fourth section of an act entitled "an act to amend an act entitled an act for assessing and collecting county revenue," approved February 19th, 1841.

An act to authorize persons having a lien upon land to pay the taxes upon the same.

An act to provide for and regulating the action of replevin before justices of the peace.

An act authorizing proceedings in chancery against corporations.

An act to authorize religious societies to lease or sell their real estate.

Acts passed in 1847.

Acts of a General Nature passed at the Annual Session of the Legislative Assembly in 1847, to wit:

An act to provide for the admeasurement of dower.

An act to amend the election laws concerning justices of the peace, and for other purposes.

An act to amend an act entitled, "an act to provide for and regulate general elections."

An act to amend an act entitled, "an act to provide for the destruction of wolves."

An act to amend an act entitled, "an act to provide for the government of the several towns in this territory, and for the revision of county government, and for other purposes."

An act to provide for taking the depositions of persons out of the territory to be used before justices of the peace.

An act to amend an act entitled, "an act to regulate taverns and groceries."

Acts passed in February and March 1848.

Acts of a General Nature passed by the Legislative Assembly at the Session thereof commenced in February, A. D. 1848, to wit:

An act to make the official certificate of any register or receiver of any land office of the United States in this territory evidence in certain cases.

An act to provide for the support of the poor.

An act to amend an act entitled, "an act to provide for the destruction of wolves."

An act to amend an act entitled, "an act to amend an act entitled an act for assessing and collecting county revenue, and for other purposes."

An act to provide for the publication of legal and other notices in the several counties in this territory.

An act to amend an act entitled, "an act to amend an act entitled an act to provide for the government of the several towns in this territory, and for the revision of county government."

An act to amend an act entitled, "an act to provide for the government of the several towns in this territory, and for the revision of county government."

An act concerning conveyances of real estate.

An act concerning commitments.

An act to provide for the incorporation of cemetery associations.

An act authorizing the construction of electric telegraph lines in Wisconsin.

Acts passed in June, July and August 1848.

Acts of a General Nature passed by the Legislature of the State of Wisconsin, at the first session commencing on the fifth day of June, and ending on the twenty-first day of August, A. D., 1848, to wit:

An act concerning the attorney general.

An act to prescribe the duties of the state treasurer.

An act to divide the state of Wisconsin into congressional districts.

CHAPTER 157.

An act declaring in what cases certain offices shall be deemed vacant, and the manner of filling such vacancies.

An act to establish the University of Wisconsin.

An act to exempt a homestead from forced sale.

An act providing for the appointment of commissioners to select and locate the school and other lands granted to the state by congress.

An act to authorize special town meetings in certain cases.

An act to provide for levying and collecting state revenue.

An act concerning the weighing of lead ore, copper ore, and other mineral substances.

An act to authorize the appoinment of commissioners to take the acknowledgment of deeds and other contracts and depositions in other states.

An act to amend an act entitled, "an act to provide for the destruction of wolves."

An act to exempt from forced sale on final process the property therein named.

An act relating to the appointment and duties of notaries public.

An act prescribing the powers and duties of the secretary of state.

An act to provide for the annual meeting of the legislature.

An act to provide for the election, and define the duties of state superintendent of public instruction.

An act to provide for the election of clerks of the circuit courts of this state.

An act to provide for the division of the several counties under the county system of government into towns.

An act reducing the fees of registers of deeds.

An act to establish the times of holding circuit courts.

An act to amend an act entitled, "an act to punish trespass on lands, approved January 27th, 1844."

An act to amend an act to punish trespass on lands.

An act to provide that notice of intended application to the legislature be given in certain cases.

An act to amend an act entitled, "an act to amend an act concerning proceedings in courts of record, and for other purposes," passed the 27th day of January, 1844.

An act relative to printing.

An act for the appointment of commissioners to revise and simplify the rules of practice in courts.

An act to defray the contingent expenses of the executive office.

An act relating to courts, judges and clerks.

An act to extend the jurisdiction of justices of the peace in civil cases.

An act supplemental to an act to establish the University of Wisconsin.

An act to provide for holding general and special elections, the time when, the manner of holding the same, and the qualifications, disabilities and privileges of electors.

An act relating to stationery.

An act to amend an act entitled, "an act to prescribe township and county government," approved February 18, 1841.

An act in relation to public schools.

An act to authorize the construction of plank and turnpike roads.

An act to provide for the payment of the salary of state officers.

What other acts and parts of acts repealed.

And all other acts and parts of acts, the subjects whereof are revised and re-enacted in these revised statutes, or which are repugnant to the provisions therein contained.

Repeal of acts not to affect acts done or rights accrued, &c.

SEC. 2. The repeal of the acts mentioned in the preceding section shall not affect any act done or right accrued or established, or any proceeding, suit or prosecution had or commenced in any civil case previous to the time when such repeal shall take effect; but every such act, right and proceeding shall remain as valid and effectual as if the provision so repealed had remained in force.

Offences committed and forfeitures incurred not affected by repeal except, &c.

SEC. 3. No offence committed, and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed shall be affected by such repeal; except that when any punishment, forfeiture or penalty shall have been mitigated by the provisions of these revised statutes, such provisions shall apply to and control any judgment to be pronounced after the said statutes, shall take effect for any offence committed before that time.

Prosecutions pending not affected.

SEC. 4. No prosecution for any offence, or the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, shall be affected by such repeal; but the same shall proceed in all respects, as if such provision had not been repealed, except that all such proceedings had after the time when the said revised statutes shall take effect, shall be conducted according to the provisions of the said statutes, and shall be in all respects subject to the said provisions.

Statutes heretofore repealed to so continue.

SEC. 5. All statutes and parts of statutes which were repealed or abrogated by, or were repugnant to any law hereby repealed, and which are not re-enacted and consolidated in these revised statutes, shall continue to be repealed, and shall be deemed abrogated.

Repeal of repealed statutes not to imply that they were in force, &c,

SEC. 6. The repeal by this chapter, of any statute or part of a statute heretofore repealed, shall not be construed as a declaration or implication that such statute or part of a statute has been in force at any time subsequent to such first repeal.

Construction of repeal as to certain offices and appointments.

SEC. 7. The repeal by this chapter of any statutory provision which is consolidated and re-enacted in the revised statutes, by virtue of which any appointments shall have been made, or any office is or shall be held, shall not be construed to vacate such office, or in any way affect such appointment; but the said appointment shall continue, and the said offices shall be held subject to the provisions of law in force after the repeal of such statutory provision.

Ib.

SEC. 8. But when any office is abolished by the repeal of any act, and such act is not consolidated and re-enacted in the Revised Statutes, such office shall cease at the time such repeal shall take effect.

What acts not enumerated are repealed.

SEC. 9. In addition to the several acts hereinbefore enumerated, all acts and parts of acts passed previous to the present session of the legislature, the subjects whereof are revised or compiled and re-enacted in the revised statutes, as well as all other such prior acts and parts of acts, the provisons of which are repugnant to the provisions contained in the revised statutes, are hereby repealed; subject, however, to the provisions, limitations and restrictions in this chapter contained.

When provisions contravene, which to prevail.

SEC. 10. If the provisions of any law passed at the present session, not incorporated in the chapters composing the revised statutes, shall contravene or be inconsistent with the provisions of such chapters, the provisions of such chapter shall prevail.

Ib.

SEC. 11. If the provisions of different chapters of the revised statutes conflict with, or contravene each other, the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of such chapter.

Ib.

SEC. 12. If conflicting provisions be found in different sections of the same chapter, the provisions of the section which is last in numerical order shall prevail, unless such construction be inconsistent with the meaning of such chapter.

APPENDIX.

AN ACT to provide for the election of Judges and for the classification and organization of the Judiciary of the State of Wisconsin.

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows :

Judges, when elected; how votes canvassed, and returned, &c.

SECTION 1. An election for judges of the circuit courts of this state, shall be held in each of the judicial circuits, on the first Monday of August, in the year one thousand eight hundred and forty-eight; the election shall be conducted, and votes canvassed, in the same manner as at general elections for state and county officers; the inspectors or judges of said election shall make returns to the clerk of the board of supervisors or county commissioners of their respective counties, immediately after the same are canvassed, and the clerks of the boards of supervisors or county commissioners shall file the same in their office, and forthwith transmit a certified copy thereof to the governor of the state.

Governor, &c., to canvass votes. who elected; certificate of same and tie.

SEC. 2. On the fourth Monday in August, or as soon as the returns from all the counties of any circuit are received by the governor, he, together with the secretary of state and treasurer, shall proceed to canvass the same; the person having the highest number of votes cast in each circuit shall be the judge of such circuit; and the governor shall transmit to the person so elected a certificate of his election, under the seal of the state; and in case there should be a tie, or a vacancy from any other cause, in one or more of the circuits, the governor shall forthwith proclaim the fact, and immediately order a new election to be held in the circuit or circuits where such tie or vacancy has happened.

Oath of office; to be filed, when judges to enter on duties of office.

SEC. 3. The judges elect shall, before entering upon the duties of their office, each take and subscribe the following oath or affirmation: "I ———, do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States and of the state of Wisconsin, that I will administer justice without respect to persons, and will faithfully and impartially discharge the duties of the office of judge of the supreme and circuit courts of the state of Wisconsin, according to the best of my ability;"

which said oath shall be duly certified by the officer administering the same, and by said judge filed in the office of the secretary of state; said judges shall severally enter upon the duties of their office, as soon as elected and qualified.

Classification of judges; how long each to hold.

SEC. 4. The judges of the circuit court elected at the first election thereof, shall be classified by lot, to be publicly drawn by the secretary of state; and in his absence, by any person appointed by the governor, in the presence of the governor, treasurer, attorney general, and the said judges, or a majority of them, at the office of the secretary of state, immediately after the completion of the canvass of the votes given at the first election of such judges. The classes shall be numbered one, two, three, four and five, according to the time of service of each, the class having the shortest time to serve being number one; and the judge whose lot shall fall in class numbered one, shall hold his office for two years, and until his successor shall be chosen and qualified; the judge whose lot shall fall in class numbered two, shall hold his office for three years, and until his successor shall be chosen and qualified; the judge whose lot shall fall in class numbered three, shall hold his office for four years, and until his successor shall be chosen and qualified; the judge whose lot shall fall in class numbered four, shall hold his office for five years, and until his successor shall be chosen and qualified; and the judge whose lot shall fall in class numbered five, shall hold his office for six years, and until his successor shall be chosen and qualified: and the said judges shall then and there ballot for one of their number to be chief justice, and the person having a majority of all the ballots cast shall be the chief justice; and a certificate of said drawing, classification and balloting shall be signed by the governor and secretary of state, and filed and recorded in the office of the secretary of state.

Election of chief justice, &c.

Powers and jurisdiction of circuit courts.

SEC. 5. The circuit courts shall have and exercise all the powers which have been heretofore exercised by the district courts of the territory of Wisconsin; they shall have original jurisdiction of all cases both in law and equity, and a supervisory jurisdiction over all inferior courts and jurisdictions; they may prescribe all such rules of practice, and other rules to regulate their proceedings and to facilitate the administration of justice, as they may deem necessary, not inconsistent with the laws of this state; such rules shall be prescribed by the supreme court, and shall be uniform in the several circuits.

Judges to be conservators of the peace, &c.

SEC. 6. The judges of the circuit courts shall be conservators of the peace throughout the state, and shall have the same powers to preserve the peace as have heretofore been conferred upon the judges of the district courts of the territory of Wisconsin.

Writs, how issued, tested and made returnable.

SEC. 7. All writs issuing from the circuit courts shall be in the name of the state of Wisconsin; shall bear date the day they are issued, and shall be tested in the name of the judge of the circuit in which they are issued, and shall be returnable on the first day of the term next succeeding the date of their issue, unless otherwise directed by the judge, or by rule of court, and be signed by the clerk, and sealed with the seal of the court, and shall run to the proper officer of the county in which they are issued, but alias writs, after service upon one defendant, may be issued to co-defendants and be directed to any county in the state.

What seals to be used.

SEC. 8. Until seals for the circuit and supreme courts are provided, the seals of the supreme and district courts of the territory of Wisconsin shall be used, and the affixing such seals shall be deemed a sufficient sealing of all writs and process, record exemplifications, or attestation of said courts, which by law are required to be authenticated by the seal of the court.

What writs, &c. circuit courts may issue.

SEC. 9. The circuit court shall have power to issue writs of injunction, mandamus, certiorari, quo warranto, and all other writs, process, powers and commissions, according to the common usage of courts of record of common law and equity jurisdiction, necessary to the full and complete jurisdiction of the causes and the parties, and to the full and complete administration of justice, and to the carrying into effect of their judgments, orders and decrees.

What laws and rules regulating courts to continue in force, &c.

SEC. 10. All laws regulating the practice or proceedings, or prescribing the powers and duties of the supreme and district courts of the territory of Wisconsin, or the judges thereof, in force on the thirteenth day of March, A. D. 1848, not repugnant to the constitution of the state of Wisconsin, shall continue in force, and apply to the supreme and circuit courts of this state, until altered or repealed by the legislature; and all the rules of practice of said supreme and district courts of the territory of Wisconsin shall continue valid and operative, as far as the same may be applicable, until altered or amended by the supreme and circuit courts of this state respectively.

Proceedings when judge of circuit court interested in cause, &c.

SEC. 11. In case the judge of the circuit court shall be interested in any cause or causes pending in said court, or shall have acted as attorney, solicitor or counsel for either of the parties thereto, the said judge shall not have power to hear and determine such cause or causes, except by consent in writing of the parties thereto; and upon motion, the said judge shall order a change of venue to an adjoining district, and the judge of said district shall hear and determine said cause or causes.

Judge may hold court in other circuit than his own.

SEC. 12. Any circuit judge may hold court in any circuit other than that for which he was elected, in case of the absence, sickness or other disability of any one of the judges to hold the regular term or terms of court.

Force and effect of process, judgments, &c., heretofore issued or had, &c.,

SEC. 13. All process or commissions, heretofore issued in the name of the territory of Wisconsin, or in the name of the United States, by virtue of any law of the territory of Wisconsin, or under the authority of the same, and all judgments, decrees and orders, heretofore made by any court, judge, or justice of the peace, acting by virtue of any law of the territory, or of the United States, shall have the same force and effect as if the territorial government had not been terminated; and all writs heretofore issued, and made returnable at the terms of the district courts of the territory, shall be deemed and considered as returnable at the terms fixed by this legislature, and until the election and qualification of the judges, writs may be issued and tested in the name of the state of Wisconsin.

Sales by masters in chancery con-

SEC. 14. In all cases where persons, who were masters in chancery at the time of the adoption of the constitution, have sold real firmed; sheriffs to execute deeds.

estate by virtue of an order or decree of a court of chancery, for that purpose, since the adoption of the constitution or the admission of this state into the Union, the sales shall be and are hereby declared to be as valid as if said constitution had not been adopted or state admitted, and the sheriff of the proper county is hereby authorized and empowered to make and execute deeds to the purchasers, the same as the master might have done.

Proceedings where masters in chancery have advertised, but not sold, &c.

SEC. 15. In all cases where masters in chancery, in pursuance of any decree or order of a court of chancery for that purpose made, have advertised real estate for sale, and the sale is not yet made, it shall be lawful for the sheriff of the proper county to proceed upon the said advertisement and make such sale: and in all other cases where a decree in chancery authorizing a sale has been obtained, it shall be lawful for the sheriff of the proper county to proceed and advertise and sell, in the same manner as the master in chancery might have done, and proceed therein the same as the said master could have done if his said office had not been abolished.

Supreme court, when and where held.

SEC. 16. The first term of the supreme court shall be held at the capitol in Madison, on the second Monday in January next, and thereafter on the second Monday in January in each year.

Tax on suits, where paid and how applied.

SEC. 17. On each suit in the circuit court there shall be levied a tax of one dollar, which shall be paid to the clerk at the time of the commencement thereof, which tax so levied shall be paid into the treasury of the state, and form a separate fund, to be applied to the payment of the salary of judges; said sum of one dollar shall be taxed in the bill of costs and recovered as other costs of suit.

Who to act as court commissioner, and his powers.

SEC. 18. The judge of probate in each organized county, or the person who may hereafter have probate jurisdiction, shall act as a court commissioner, and shall have power to administer oaths, take the acknowledgment of deeds, allow writs of attachment and certiorari, and in the absence of the judge from the county, writs of injunction, except upon causes where judgments have been obtained, and habeas corpus in bailable actions: he may determine upon the amount and sufficiency of bail; he may take all such testimony or depositions of witnesses, to be used in cases in law and in equity, as may be provided for by law or by rule or order of the court; he may state accounts between parties in cases referred to him by order of court, and tax costs.

Salary of judges.

SEC. 19. The said judges shall each receive the sum of one thousand five hundred dollars per annum, payable quarterly.

Approved, June 29, 1848.

AN ACT providing for the appraisal and subdivision of the school and University lands.

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Legislature to appoint three persons in each

SECTION 1. There shall be appointed by the legislature at its present session, by joint resolution of the two houses, three persons in each county of the state as appraisers of the university lands and school lands composed of the sixteenth sections in the several townships within their respective counties, and also the odd numbered sections remaining unsold within the grant of land to aid in the construction of a canal from Milwaukee to Rock River. county to appraise school lands, &c.

SEC. 2. The said appraisers before entering upon the duties of their offices, shall each be required to take an oath or affirmation, to be administered by some competent officer, to support the constitution of the United States, and of the State of Wisconsin, and faithfully and impartially to discharge all the duties devolving upon them as such appraisers, which oath shall be annexed to the appraisal and returned therewith to the secretary of state at Madison. Oath of appraisers.

SEC. 3. As soon as may be, after the appraisers of each county shall have been advised of their appointment, they shall meet together and agree upon such arrangement as will facilitate the completion of the duties required of them by this act, and enable them to make their report to the secretary of state at Madison at as early a period as practicable. Appraisers to meet, &c.

SEC. 4. It shall be the duty of such appraisers, under instructions from the secretary of state, to describe the quality, location, and general advantages of all the school and university lands situated in their respective counties, and to appraise the same at a fair valuation without reference to any improvements made thereon, but giving due consideration to other circumstances, such as proximity to settlements and credit for purchase money; they shall also return a particular description of all improvements made by any occupant or claimant, on any school or university lands, with an estimate of the value of such improvements, the name of the person or persons claiming the same, and the circumstances under which the same were made. Duties of appraisers.

SEC. 5. In making the description and appraisal as prescribed in this act, the said appraisers shall describe and appraise the agricultural lands in lots not exceeding forty acres each, such lands as shall be occupied by any lessee or his assigns, or are actually in possession of any person or persons intending to claim of the state a pre-emption right to purchase the lot he or she so occupies, at its appraised value, (such claims however not to be respected to a larger quantity than forty acres for each occupant,) may be subdivided by the appraisers, at their discretion, into such smaller parcels as shall best accommodate such lessees, or assigns, or occupants, and the said appraisers are authorized, should they conceive that the interests of the school fund would thereby be promoted, to lay off any of such lands into town or village lots, and appraise them as such, or in case a city, town or village, should be found in whole or in part located upon any school or university lands, such appraisers shall conform in their description and appraisal of the lands thus situated, to the subdivisions that may have been made by the municipal authorities of any such city, town or village, into squares, blocks, streets and alleys, and shall adopt in their returns such divisions of lots and parcels as shall have been made by the lessees and their assigns in the various transfers of leases that may have taken place between them, and as may actu- Ib.

ally exist at the time the appraisal shall be made, as hereinbefore provided for; the appraisers shall estimate the expense of appraising and subdividing any tract or lot, and add the same to their appraisal.

Duty of secretary of state; governor to fill vacancy.

SEC. 6. It shall be the duty of the secretary of state, immediately after such appraisers shall have been appointed by the legislature, to inform them immediately by letter or by circulars through the public mail, or by other conveyance, of their appointment as such appraisers, and to ascertain as soon as practicable, whether the appraisers so appointed will accept their office; and in the event of any vacancy occurring in the office of appraiser by death, resignation, or refusal or neglect to qualify, or otherwise, the secretary of state shall forthwith advise the governor thereof, who is hereby authorized immediately to fill such vacancy by the appointment of some other suitable person, who shall forthwith be advised by the secretary of state of his appointment as such appraiser.

Appraisers to make report, and when; to make plats, &c.

SEC. 7. When the subdivision, appraisal and description of the school and university lands in any county, shall have been completed, it shall be the duty of the appraisers of such county to confer together, and as soon as practicable to make a joint report in detail to the secretary of state of all they shall have done in pursuance of the provisions of this act, conforming in said report to the forms that may have been prescribed by the secretary of state, but under no circumstances shall such report be delayed beyond the fifteenth day of December, one thousand eight hundred and forty-eight; and it is hereby made the duty of such appraisers to report without failure by that day at the fartherest, what progress they shall have made in the discharge of the duties of their office, whether their work shall have then been completed or not; they shall make duplicate plats of each section of school and university land, which shall set forth the number of acres contained in said section and every subdivision of the same, the size of each town lot, and such further description as may be required by the secretary of state; one of said plats shall be filed in the office of the clerk of the board of supervisors or county commissioners of the county in which such land is situated, and the other returned to the secretary of state.

Compensation of appraisers and how paid, &c.

SEC. 8. The appraisers aforesaid shall be allowed for the services herein required of them, at the rate of two dollars and fifty cents per day, for each and every day they may be actually and necessarily engaged in the discharge of the duties of their office, the number of days they shall be so engaged, to be determined by their own affidavits, to be audited by the boards of supervisors or county commissioners, and paid out of the treasury of their respective counties; and upon the sale of any tract or lot of school land, or university land, the expense of the subdividing and appraisal of such tract or lot, shall be paid to the treasurer of the county in which such tract or lot is situated, to reimburse the expense paid by such county for subdividing and appraising the same: Provided, that no compensation shall be allowed or paid to any appraiser, until the secretary of state shall certify that such appraiser has complied with all duties enjoined on him by this act.

Secretary to report, and when.

Sec. 9. It shall be the duty of the secretary of state to make a report in detail to the legislature, on or before the twentieth day of January one thousand eight hundred and forty-nine, of the appraisals, descriptions and subdivision of all such school and university lands within the several towns and precincts of the state, as may have been returned to him by the appraisers, together with such other facts and suggestions as he may deem it expedient to communicate, adopting such form in his report as may be best calculated to facilitate the action of the legislature thereon.

Approved August 12, 1848.

AN ACT to amend an act to provide for the appraisal and subdivision of the School and University lands, approved August 12, 1848.

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Repeal of law for appraisal of school lands north of Wisconsin and Fox rivers.

Section 1. So much of an act, entitled "An act providing for the appraisal and subdivision of the School and University lands," approved August 12, 1848, as relates to the counties or parts of counties lying north of the Wisconsin and Fox rivers in this state, is hereby repealed.

Approved March 2, 1849.

AN ACT accepting the grant of land made by Congress to aid in the improvement of the Fox and Wisconsin rivers.

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Assent of state given to act of congress.

Section 1. The assent of the State of Wisconsin is hereby given to the act of Congress entitled, "An act to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the territory of Wisconsin," approved August 8th, 1846.

Approved June 29, 1848.

AN ACT to provide for the improvement of the Fox and Wisconsin rivers and connecting the same by a canal.

The People of the State of Wisconsin represented in Senate and Assembly, do enact as follows:

Construction of improvements to be under direc-

Section 1. The construction of the improvements contemplated by the act of Congress entitled, "An act to grant a certain quanion of board of public works.

tity of land to aid in the improvement of the Fox and Wisconsin rivers and to connect the same by a canal in the territory of Wisconsin," approved August 8th, 1846, and the superintendence and repair thereof after the completion, shall be under the direction and control of a "Board of Public Works."

Board to consist of five; oath, term of office and compensation.

SEC. 2. Said board shall consist of five persons who shall be elected by joint vote of the legislature, and who shall severally take and subscribe an oath of office to be filed in the office of the secretary of state, and shall continue in office for the term of one year, and until others are duly qualified; they shall each receive as a compensation for their services, the sum of three dollars per day for each day's attendance to the duties required by this act, and for each day necessarily spent in travelling to and from the places of meeting, to be paid out of the fund appropriated for said work; four of said board shall constitute a quorum for the transaction of business.

Register to act as secretary and his duties as such.

SEC. 3. The register provided for in the thirtieth section of this act, shall act as secretary of the board of public works, whose duty it shall be to keep a faithful record of the transactions of said board, he shall have the custody of all books and papers belonging to the board, and certify their orders and proceedings when required, and shall perform such other duties as may be imposed upon him by said board.

Board may appoint superintendent, &c; compensation.

SEC. 4. The said board may appoint a superintendent and engineer, and authorize the employment of such subordinate officers as may be necessary, and determine the compensation of each, but no superintendent or other person except the engineer, shall receive more than two dollars per day for each day actually employed in the service of the state.

Works where commenced and order in which prosecuted; proceeds of sales, how applied.

SEC. 5. The said commissioners shall first commence the construction of the canal, and after said canal is finished, the improvements of the Wisconsin and Fox rivers shall be commenced, beginning from both ends of the canal down each stream, so as to make said streams navigable as the improvements progress, with the exception of the improvement of the several rapids on Fox river below lake Winnebago, which may be commenced at any time said commissioners may think proper; after the construction of the canal, the net proceeds of one-sixth of the sales of the grant of land is hereby set apart for the improvement of the Wisconsin river, and five-sixths of said proceeds to the improvement of the Fox river: Provided, that no more than ten thousand dollars shall be expended in improving the navigation of the Fox river from the said canal to Lake Winnebago, until further action of the legislature of this state, or until the said river shall be made navigable to Green Bay.

Works to be divided into sections, and how let, &c.

SEC. 6. The said works shall be divided into convenient sections, unconnected with each other, each of which shall be let separately by contract to the lowest bidder, but where the bids of any one contractor shall embrace more than one section and shall be in the aggregate less than other proposals for the same work, his bids may be accepted, and all contracts shall be made in the triplicate, one copy to be retained by the secretary of the board, and one copy to be deposited in the office of the secretary of state.

SEC. 7. Each section shall be advertised separately, and the notice of the time and place at which proposals will be received by said board for letting the same to contractors shall contain a concise but full specification of the work to be done, the time limited for the completion thereof, and the terms of payment, and shall be published six weeks successively in such papers published in the state as the board may direct, the last publication to be at least ten days before the expiration of the time limited therein to receive proposals.

Each section to be advertised separately; what notice to contain and how published.

SEC. 8. All proposals shall be sealed, and shall distinctly specify the section or part of the work to be constructed, the price to be paid without any alternative condition or limitation, and no more than one proposition shall be received from any one person for the same contract; each proposal shall also be accompanied by a guarantee to be signed by two or more sureties whose sufficiency shall be certified by a judge of the circuit court or one of the board, conditioned that the holder shall enter into contract within such time after receiving notice of the acceptance of his bid as the board may direct, and will give security to the satisfaction of such board for the completion of the work according to the specifications contained in the advertisement of the board; otherwise such proposals shall be rejected.

Proposals, how made and what to contain; to be accompanied by guarantee.

SEC. 9. At the expiration of the time limited for receiving proposals, the board shall meet, and shall then open and compare the different proposals and shall accept the lowest offer made in compliance with the provisions of this act, and forthwith notify the bidder of such acceptance, and if any person whose proposal shall have been accepted, does not, within fifteen days thereafter, enter into written contract for the performance of the work according to his bid, and give security as herein provided, the board shall proceed to let, by giving further notice, such contract, to some other person or persons, upon the best terms they can obtain, and may sue for and recover on the guarantee before mentioned any excess by the board agreed to be paid upon such second letting, over the price demanded in the proposal of the person or persons thus failing to enter into contract as aforesaid.

Board to compare proposals and accept lowest bid; when to re-let, &c.

SEC. 10. No advance or extra compensation shall in any event be made to any contractor, except that the board may, whenever a contract shall be partially fulfilled, advance the sum not exceeding seventy-five per cent on the appraisal of the superintendent, of the work done under such contract as hereinafter provided.

No extra compensation allowed to contractor; when advance may be made, &c.

SEC. 11. It shall be the duty of the superintendent personally to superintend the work of each contractor, and to see that the same be done according to contract, reporting any and all deficiencies to the board, and he shall once a month measure and estimate the work done under each contract, and report the same to the secretary of the board, who shall thereupon draw his warrant on the treasury for the sum equal to seventy-five per cent. of the amount estimated to be due on such contract, which warrant shall be countersigned by the superintendent and paid by the treasurer on presentation: Provided, that if in any case a contractor shall be dissatisfied with such admeasurement and estimate, he may appeal to the board whose decision shall be conclusive.

Superintendent to superintend and measure work and report monthly, &c.

Contractor may appeal to board.

No member of board or officer to have interest in contract.

SEC. 12. No member of the board of works, nor any officer constituted under the provisions of this act, shall have any share or interest directly or indirectly in any contract to be given out under the provisions of this act.

Amount of contracts that may be let at one time; how lands brought into market.

SEC. 13. The aggregate amount of contracts at any time let by the board, shall not exceed the available means derivable from the sale of the lands granted in aid of said improvements, applications for the purchase of which shall have been filed prior to the time of letting such contracts, and immediately after such contracts shall have been let, said board shall cause the said lands so applied for to be brought in market, in quantities not exceeding sixteen thousand acres at any one sale, and in time to meet the payment to become due upon the contracts let as aforesaid.

Quorum; board, when to meet and their duties when met.

SEC. 14. The board, any four of whom shall be a quorum, shall meet once in every three months, and oftener if they shall deem necessary, and shall examine all reports, books and accounts submitted to them or in the hands of the secretary, and at such meeting may allow such accounts for contingent expenses as may have been incurred under their direction, and may give such directions and adopt such regulations not inconsistent with this act for the prosecution of the works and relative to the duties of the several officers herein provided for as they may deem expedient; it shall also be the duty of the governor to transmit monthly to the president of the United States a statement of the amount expended in the construction of said improvements during the preceding month.

Duty of governor.

Board may take and use lands, waters and materials.

SEC. 15. In the construction of such improvements, the said board shall have power to enter on, to take possession of and use all lands, waters and materials, the appropriation of which for the use of such works of improvement shall in their judgment be necessary.

When lands, water power, &c., reserved to state.

SEC. 16. When any lands, waters or materials appropriated by the board to the use of said improvements, shall belong to the state, such lands, waters or materials and so much of the adjoining land as may be valuable for hydraulic or commercial purposes, shall be absolutely reserved to the state, and whenever a water power shall be created by reason of any dam erected, or other improvements made on any of said rivers, such water power shall belong to the state, subject to future action of the legislature.

When and how lands, waters and materials appropriated to be appraised.

SEC. 17. When any lands, waters or materials appropriated by the board to the use of the public in the construction of said improvements, shall not be freely given or granted to the state or the said board cannot agree with the owner as to the terms on which the same shall be granted, the superintendent under the directions of the board, shall select an appraiser, and the owner shall select another appraiser, who together, if they are unable to agree, shall select a third, neither of whom shall have any interest directly or indirectly in the subject matter nor be of kin to such owner, and said appraisers or a majority of them shall proceed to hear testimony and to assess the benefits or damages, as the case may be, to the said owner from the appropriation of such land, water or materials, and their award shall be conclusive unless modified as herein provided. If the owner shall neglect or refuse to appoint an appraiser as herein directed, after ten days' notice of such appointment by the superintendent, then such superintendent shall make such appointment for him.

Either party may appeal, and how appeal tried, &c.

SEC. 18. Either party may appeal from such award to the circuit court of the county in which the premises may be situated, within thirty days after such award may be made and filed with the secretary of the board, and such appeal shall be tried by a jury as other cases commenced in said circuit court, and upon the finding of such jury, judgment may be rendered in favor of either party, but no execution shall issue thereon against the state.

Entry of award to be made by secretary of board, and how.

SEC. 19. An entry of such award signed by the appraisers or a majority of them, or certified by the clerk of the court in case the same shall have been appealed, and containing a proper description of the premises appropriated, the names of the persons interested, and the sum estimated for benefits or damages, shall be made in a book to be kept by the secretary of the board.

Transcript to be acknowledged and recorded, and effect of same.

SEC. 20. A transcript of such entry signed in like manner, acknowledged or proved as a conveyance of land, shall be recorded in the office of the register of deeds of the county in which the premises are situated, and the fee simple of said premises shall thereupon vest in the state.

Damages when to be paid or tendered, and effect of same.

SEC. 21. If the damages exceed the benefits, it shall be the duty of the board to direct the same to be paid out of the fund appropriated to said improvements, proof of such payment or the offer thereof in case the party entitled shall decline to receive the same, shall discharge the state and every person under its employ from any claim for such lands, waters and materials appropriated as aforesaid.

When board may make rules and regulations, &c.

SEC. 22. As soon as any portion of said improvements shall be completed so as to admit of use, the said board shall make rules and regulations from time to time in respect to the passage of boats, rafts and other floats through the canal and locks, and all matters connected with the navigation thereof, and impose such forfeitures for the breach of any such regulations as may be deemed reasonable by them.

Board to report annually to governor.

SEC. 23. Said board shall annually, and oftener if required, submit to the governor a full statement of the condition of said improvements, and minute details of the receipts and expenditures of money and the purposes to which it has been applied, and generally of all their proceedings during the preceding year.

Legislature to appoint treasurer annually.

SEC. 24. For the safe keeping and the disbursement of the moneys appropriated to said improvements, the legislature shall appoint by joint vote, some competent and responsible person to be treasurer of the board of public works, who shall hold his office for the term of one year, or until his successor shall be appointed and qualified.

Treasurer to give bond, &c.

SEC. 25. The treasurer before he shall be qualified to act as such, shall take the oath required by the constitution, and shall give bond in the sum of fifty thousand dollars, with sureties, who shall swear that they are worth over and above all liabilities and property exempt from forced sale on final process an amount which in the aggregate shall be equal to the penalty of said bond.

Salary of register and treasurer.

SEC. 26. The register and treasurer shall each receive an annual salary of two hundred dollars, and such fees in pre-emption

Board to prescribe rules and establish fees.

cases and in entries of lands as may be allowed by the board: Provided, that the whole amount which either of said officers shall receive during any one year shall not exceed six hundred dollars, and the surplus of fees over and above the amount allowed to the register and treasurer as aforesaid, shall be paid to the treasurer and become a part of the improvement fund; the board of works shall prescribe such rules and regulations relating to the duties of said officers as may be necessary, and may establish the fees in the cases above referred to.

Who not to hold office of treasurer, &c.

SEC. 27. No member of said board, nor any person who may be interested directly or indirectly in any contract for the construction of any portion of said improvements, or surety for any contractor, shall hold the office of treasurer or be received as one of his sureties.

All payments to be in coin; board to prescribe how accounts kept.

SEC. 28. All payments to said treasurer shall be made in gold and silver coin, and all payments to contractors shall be in like currency, and the board shall prescribe the manner in which the accounts of the treasurer shall be kept and the moneys disbursed by him.

Use or misapplication of funds to be felony; treasurer to pay only on warrant of board, &c.

SEC. 29. Any treasurer or other person in the employ of the state, under and by virtue of the provisions of this act, who may be charged with the receipts or disbursements of any of the funds belonging to said improvement, arising either from the sale of lands or from any other source, who shall use, loan or exchange, or otherwise misapply any portion of said funds, shall be deemed guilty of embezzling so much of said funds as may be thus used, loaned or exchanged, or otherwise misapplied, which is hereby declared to be a felony; and no money shall be paid out by the said treasurer except upon the warrant of the said board, which shall be signed by a majority of them and countersigned by the secretary, and the said warrants shall be paid in the order in which they are presented giving a preference to no person.

Land office established at Oshkosh.

Register to be appointed by legislature for one year and give bond.

When governor may remove him, &c.

SEC. 30. For the disposal of the lands of the state granted in aid of said improvements, there shall be a land office established at Oshkosh in the county of Winnebago, which office shall be under the direction of an officer to be called the "Register of the state land office," who shall be appointed by joint vote of the legislature and shall give bond to the state with security to be approved by the governor, in the sum of ten thousand dollars, for the faithful discharge of the duties of his office, and shall reside at the place where the office is directed to be kept. He shall hold his office for one year, and until his successor shall be appointed and qualified. For a violation of any of the duties conferred on the register by this act or of any instructions of the governor relating to his duties, the governor of this state is authorized to remove the said register from office, and appoint some person to fill such vacancy, and the person so appointed shall continue in office until his successor is duly qualified.

Governor to transmit plats, &c, to register.

SEC. 31. The governor shall cause to be prepared and transmitted to the register of the land office, general plats of the land directed to be sold at said office together with copies of the field notes of said lands.

Board to select lands for sale, and how, and to give notice of sale.

SEC. 32. The board of works shall select from said lands a quantity not exceeding sixteen thousand acres, embracing in such selections lands to which the right of pre-emption may have attached, and, giving such lands priority in the order of sale corresponding with the dates of settlement established by the claimants respectively, and shall proclaim the said lands so selected for sale at public auction at a time to be fixed by them, not less three months from the date of such proclamation, a copy of which shall be published in all the newspapers printed in the county or counties in which the lands mentioned therein are situated.

Sale, when to open and close; lands unsold to be disposed of at private sale.

SEC. 33. Such sale shall open on the day mentioned in such proclamation, and shall continue open from day to day until all the lands shall have been offered, and all the lands remaining unsold at the close of any such public sale, may be disposed of at private sale by the register in the manner herein prescribed.

Lands not to be sold for less than $1,25 per acre, and payments to be in coin.

SEC. 34. No lands shall be sold by virtue of this act at either public or private sale, for less than one dollar and twenty-five cents per acre, and all payments therefor shall be made to the treasurer in gold and silver coin.

Register to enter applications for purchase; if two or more apply for same tract, &c.

SEC. 35. The register shall enter in his books to be kept for the purpose, the application of persons who may apply for the purchase of any of said lands subject to sale, and who shall produce to him a receipt from the treasurer of the board of works for the purchase money of the tract applied for, stating in each entry the date of the application, the date of the receipt, the amount of money specified therein, and the number of the section, township and range applied for. If two or more persons apply at the same time for the same tract, the register shall immediately offer such tract in the presence of the parties to the highest bidder, and the applicant who shall offer to pay the highest price shall be entitled to a preference.

To file receipt and give copy of entry.

SEC. 36. The register shall file the receipt from the treasurer produced to him by any applicant, and shall give to such applicant a certified copy of his entry.

To enter on plats the number of the certificate; plats open to inspection.

SEC. 37. The register shall also enter upon the plats the number of the certificate granted by him to any purchaser, and such plats shall be open to inspection in the presence of the register at all times.

Who may enter lands at $1,25 per acre, and to what amount.

SEC. 38. From and after the passage of this act, every person being the head of a family, or widow or a single man, over the age of twenty-one years, and being a resident of the state of Wisconsin, who has made or who shall hereafter make a settlement in person on any of the lands granted by the United States to said state to aid in the improvement of the Fox and Wisconsin rivers, and who shall inhabit and improve the same, and who has erected or shall erect a habitable dwelling thereon, shall be, and is hereby authorized to enter with the register appointed to sell said lands by legal subdivisions, any number of acres, not exceeding one hundred and sixty acres, to include the residence of such claimant, upon the payment to the treasurer of one dollar and twenty-five cents per acre for such lands subject to the following limitations.

But one pre-emption; who not entitled to any,

SEC. 39. No person shall be entitled to more than one pre-emption right under this act, and no person who quits or abandons his and what reserved.

residence or his own lands in this state to reside on the said lands, shall be entitled to a pre-emption therein; no lands required for the use of the state in constructing the said improvement of the said rivers, or returned by the board of works as a site for hydraulic or commercial purposes, and no parcel or lot of land occupied for purposes of trade and not agriculture, shall be liable to entry under the provisions of the last section.

Where two settlements on one lot, who entitled to pre-emption.

Sec. 40. When two or more persons shall have settled on the same quarter section of land, the rights of pre-emption shall be in him or her who made the first settlement, provided such person shall have conformed to the provisions of this act.

When and how statement of intention to purchase to be filed, &c.

Sec. 41. Whenever a person has settled or shall settle and improve any of said lands, and shall intend to purchase the same under the provisions of this act, such person shall in the first case, within three months after the passage of this act, and in the last, within thirty days of the date of such settlement, file with the register of the state land office, a written statement under oath, describing the land settled upon and declaring the intention of such person to claim the same under the provisions of this act, and shall make proof and payment before the day appointed by the board of works for the sale of lands.

What lands heretofore improved to be registered, &c.

Sec. 42. Any tract of land, not exceeding one hundred and sixty acres, having improvements by cultivation on the same to the amount of five acres, or on which a house or other improvements have been erected worth fifty dollars, previous to the passage of this act, shall be registered as improved or occupied lands, and the claimant of said land shall have the right to purchase the same at one dollar and twenty-five cents per acre: Provided, however, if any of said land registered shall be wanted for carrying on said work on account of material or by reason of including the termination of a canal, or any lock, dam, waste water or basin, or on account of flooding the same, said land shall be reserved and an equivalent amount of land may be selected by said claimant from some other of the appropriated lands not reserved as aforesaid, and on his application the lands so selected shall be registered in the same manner as if the same had been occupied or improved by such claimant, and said claimant shall be entitled to receive a just compensation for his improvement to be agreed upon by the person claiming the same and the commissioners, or three disinterested persons to be chosen by the said parties.

Proviso.

Governor to grant patents, and how; effect of same.

Sec. 43. Whenever sales of any of said lands shall be made, either at public or private sale, in conformity with the provisions of this act, it shall be the duty of the governor of the state to grant to the purchaser, upon the certificate of the register, a patent for the lands so sold, which patent shall be under the seal of the state, and countersigned by the secretary of state, and shall vest in the purchaser, his heirs and assigns, an absolute estate in fee simple.

How certain suits brought and recoveries applied.

Sec. 44. All suits brought by the board for a violation of any rules or regulations made by them, or for any infraction of the provisions of this act, shall be brought in the name of the state, and all sums received and collected shall become a part of the fund set apart for said improvement.

SEC. 45. The governor of this state is hereby invested with the general control and supervision of the whole work provided for in this act, and if in his opinion the said board of works or either of them, or the said treasurer, are violating any of the provisions of this act, or are misapplying any portion of the funds committed to their charge, or are abusing any of the powers conferred on them or either of them, he is hereby authorized to remove them or either of them from office, and appoint others in their places; and the persons so appointed shall continue in office until the end of the session of the legislature next to be holden, and until others are elected and qualified, and if in his opinion the moneys in the hands of the treasurer are not safe, he may order the same to be transferred to the treasury of the state.

Governor to have general control and supervision of work; may remove members of board and treasurer and appoint others, &c.

SEC. 46. The compensation of all the officers provided for by this act, shall be paid quarter yearly out of the said fund.

Officers to be paid quarterly.

SEC. 47. As soon as the selection of the lands appropriated by congress in aid of the improvements contemplated by this act shall be completed, and a sale of any portion thereof shall be required, the governor of the state shall appoint a register and treasurer, who shall hold their offices until the end of the session of the legislature then next to be holden, and thereafter the register and treasurer shall be appointed and hold their offices in the manner and for the term provided in this act.

When governor to appoint register and receiver, &c.

Approved August 8, 1848.

AN ORDINANCE

FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES NORTHWEST OF THE RIVER OHIO.

In Congress, July 13, 1787.

1. Be it ordained by the United States, in congress assembled, That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of congress, make it expedient.

Bioren and Duane's ed. Laws U. S., v. 1. p. 475.

2. Be it ordained by the authority aforesaid, That the estates, both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to and be distributed among their children, and the descendants of a deceased child in equal parts; the descendants of a deceased child or grand-child, to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate, shall have in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower shall remain in full force until altered by the legislature of the dis-

Rules of inheritance; personal property.

trict. And until the governor and judges shall adopt laws, as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, such conveyances be acknowledged, or the execution thereof be duly proved, and recorded within one year after proper magistrates, courts and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Governor.

3. Be it ordained by the authority aforesaid, That there shall be appointed from time to time, by congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

Secretary; supreme court.

4. There shall be appointed from time to time, by congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings every six months, to the secretary of congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall be in force during good behavior.

Adoption and publication of laws.

5. The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original states, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to congress from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

Officers of militia.

6. The governor for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by congress.

Civil officers.

7. Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the pre-

servation of peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

Civil divisions of the district.

8. For the prevention of crimes and injuries, the laws to be adopted or made, shall have force in all parts of the district; and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

Representative government; general assembly.

9. So soon as there shall be five thousand free male inhabitants of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: provided, that for every five hundred free male inhabitants there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the legislature; provided, that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; provided, also, that a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

Term of service; vacancies, how filled.

10. The representatives thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

Constitution of the legislative power; vacancies how filled; governor's assent to bills.

11. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress; any three of whom to be a quorum. And the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, resident in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress; five of whom congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as afore-

said, for each vacancy, and return their names to congress; one of whom congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to congress; five of whom congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council and house of representatives shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when in his opinion it shall be expedient.

Oath of office; delegate to congress.

12. The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office, the governor before the president of congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a right of debating, but not of voting, during this temporary government.

13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory; to provide also for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils, on an equal footing with the original states, at as early periods as may be consistent with the general interest:

Articles of compact.

It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states, and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE I.

Religious worship.

No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ARTICLE II.

The writ of habeas corpus; bail; fines; compensation for property taken for public service; laws not to affect private contracts.

The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever, interfere with or affect private contracts or engagements, bona fide, and without fraud, previously formed.

ARTICLE III.

Education; Indians.

Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent, and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars, authorized by congress; but laws, founded in justice and humanity, shall, from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ARTICLE IV.

States to remain part of confederacy; federal debts; taxes; primary disposal of soil; U. S. lands not to be taxed &c.; navigable waters, &c.

The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of these districts or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ARTICLE V.

States how to be formed in the territory; boundary of western state; middle state; eastern state; when admitted into the Union; proviso.

There shall be formed in the said territory, not less than three, nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: the western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash, and Post Vincents, due north to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line; provided, however, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States, on an equal footing with the original states in all respects whatever; and shall be at liberty to form a permanent constitution and state government; provided, the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interests of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

ARTICLE VI.

Slavery prohibited; proviso.

There shall neither be slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crime, whereof the party shall have been duly convicted; provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service, as aforesaid.

Resolutions repealed.

Be it ordained by the authority aforesaid, That the resolutions of the twenty-third of April, one thousand seven hundred and eighty-four, relative to the subject of this ordinance, be and the same are hereby repealed and declared null and void.

AN ACT establishing the Territorial Government of Wisconsin.

What country shall constitute the Wisconsin territory.

SECTION 1. *Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the third day of July next, the country included within the following boundaries shall constitute a separate territory, for the purpose of temporary government, by the name of Wisconsin; that is to say: Bounded on the east, by a line drawn from the northeast corner of the state of Illinois, through the middle of Lake Michigan to a point in the middle of said lake, and opposite the main channel of Green Bay, and through said channel and Green Bay to the mouth of the Monomonie river; thence through the middle of the main channel of said river, to that head of said river nearest to the Lake of the Desert; thence in a direct line, to the middle of said lake; thence through the middle of the main channel of the Montreal river, to its mouth; thence with a direct line across Lake Superior, to where the territorial line of the United States last touches said lake northwest; thence on the north with the said territorial line, to the White-earth river; on the west, by a line from the said boundary line following down the middle of the main channel of White-earth river, to the Missouri river, and down the middle of the main channel of the Missouri river to a point due west from the northwest corner of the state of Missouri; and on the south, from said point, due east to the northwest corner of the state of Missouri; and thence with the boundaries of the states of Missouri and Illinois, as already fixed by acts of congress. And after the said third day of July next, all power and authority of the government of Michigan in and over the territory hereby constituted, shall cease: Provided, that nothing in this act contained shall be construed to impair the rights of person or property now appertaining to any Indians within the said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or anywise to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, or law, or otherwise, which it would have been competent to the government to make if this act had never been passed: Provided, that nothing in this act contained shall be construed to inhibit the government of the United States from dividing the territory hereby established into one or more other territories, in such manner, and at such times, as congress shall, in its discretion, deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States. **Proviso.** **Proviso.**

SEC. 2. *And be it further enacted*, That the executive power and authority in and over the said territory shall be vested in a governor, who shall hold his office for three years, unless sooner removed by the president of the United States. The governor shall reside within the said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve of all laws passed by the legislative assembly before they shall take effect; he may grant pardons for offences against the laws of the said territory, and reprieves for offences against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office **Appointment and powers of governor.**

under the laws of the said territory, and shall take care that the laws be faithfully executed.

Secretary; his duties.

SEC. 3. *And be it further enacted*, That there shall be a secretary of the said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings on or before the first Monday in December in each year, to the president of the United States; and at the same time, two copies of the laws to the speaker of the house of representatives, for the use of Congress. And in case of the death, removal, resignation, or necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the governor during such vacancy or necessary absence.

Legislature; how constituted and elected.

SEC. 4. *And be it further eaacted*, That the legislative power shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue four years. The house of representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue two years. An apportionment shall be made, as nearly equal as practicable, among the several counties for the election of the council and representatives, giving to each section of the territory, representation in the ratio of its population, Indians excepted, as nearly as may be. And the said members of the council and house of representatives shall reside in and be inhabitants of the district for which they may be elected. Previous to the first election, the governor of the territory shall cause the census or enumeration of the inhabitants of the several counties in the territory to be taken and made by the sheriffs of the said counties, respectively, and returns thereof made by said sheriffs to the governor. The first election shall be held at such time and place, and be conducted in such manner as the governor shall appoint and direct: and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties is entitled under this act. The number of persons authorized to be elected, having the greatest number of votes in each of the said counties for the council, shall be declared, by the said governor, to be duly elected to the said council; and the person or persons having the greatest number of votes for the house of representatives, equal to the number to which each county may be entitled, shall also be declared by the governor to be duly elected: Provided, The governor shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place on such day as he shall appoint; but, thereafter, the time, place, and manner of holding and conducting all elections by the

Proviso.

people, and the apportioning the representation in the several counties to the council and house of representatives, according to population, shall be prescribed by law, as well as the day of the annual commencement of the session of the said legislative assembly; but no session, in any year, shall exceed the term of seventy-five days.

Who shall be eligible to office.

Proviso.

SEC. 5. *And be it further enacted*, That every free white male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant of said territory at the time of its organization, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters at all subsequent elections shall be such as shall be determined by the legislative assembly: Provided, that the right of suffrage shall be exercised only by citizens of the United States.

Powers of the legislature.

SEC. 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the governor and legislative assembly shall be submitted to, and, if disapproved by the congress of the United States, the same shall be null and of no effect.

What officers are to be elected by the people.

SEC. 7. *And be it further enacted*, That all township officers and all county officers, except judicial officers, justices of the peace, sheriffs, and clerks of courts, shall be elected by the people, in such manner as may be provided by the governor and legislative assembly. The governor shall nominate, and, by and with the advice and consent of the legislative council, shall appoint all judicial officers, justices of the peace, sheriffs, and all militia officers, except those of the staff, and all civil officers not herein provided for. Vacancies occurring in the recess of the council shall be filled by apointments from the governor, which shall expire at the end of the next session of the legislative assembly; but the said governor may appoint, in the first instance, the aforesaid officers, who shall hold their offices until the end of the next session of the legislative assembly.

Disqualifications for office.

SEC. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office created, or the salary or emoluments of which shall have been increased whilst he was a member, during the term for which he shall have been elected, and for one year after the expiration of such term; and no person holding a commission under the United States, or any of its officers, except as a militia officer, shall be a member of the said council, or shall hold any office under the government of the said territory.

Judiciary.

SEC. 9. *And be it further enacted*, That the judicial power of the said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate judges, any two of whom shall be a quorum, and who shall hold a term at the seat of government of the said territory, annually, and they shall hold their offices during good behavior. The said territory shall be divided into three judicial districts; and a district court or courts shall be held in each of the three districts, by one of the judges of the supreme court, at such times and places as may be prescribed by law. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law: Provided, however, That justices of the peace shall not have jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or where the debt or sum claimed exceeds fifty dollars. And the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court shall appoint its clerk, who shall keep his office at the place where the court may be held, and the said clerks shall also be the registers in chancery; and any vacancy in said office of clerk happening in the vacation of said court, may be filled by the judge of said district, which appointment shall continue until the next term of said court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases, from the final decisions of the said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court, shall a trial by jury be allowed in said court. The supreme court may appoint its own clerk, and every clerk shall hold his office at the pleasure of the court by which he shall have been appointed. And writs of error and appeals from the final decisions of the said supreme court shall be allowed and taken to the supreme court of the United States, in the same manner, and under the same regulations, as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States. And the first six days of every term of the said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws. And writs of error, and appeals from the final decisions of the said courts, in such cases shall be made to the supreme court of the territory, in the same manner as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerk of the district court of the United States in the northern district of the State of New-York receives for similar services.

Proviso.

Attorney to be appointed.

SEC. 10. *And be it further enacted*, That there shall be an attorney for the said territory appointed, who shall continue in office four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the Michigan territory. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties,

Marshal.

and be entitled to the same fees, as the marshal of the district court of the United States for the northern district of the state of New-York; and shall, in addition, be paid the sum of two hundred dollars, annually, as a compensation for extra services.

Governor, &c., to be approved by the senate.

SEC. 11. *And be it further enacted*, That the governor, secretary, chief justice and associate judges, attorney and marshal, shall be nominated, and by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary, to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before some judge or justice of the peace in the existing territory of Michigan, duly commissioned and qualified to administer an oath or affirmation, to support the constitution of the United States, and for the faithful discharge of the duties of their respective offices; which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken, and such certificate shall be received and recorded by the said secretary among the executive proceedings. And, afterwards, the chief justice and associate judges, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may he prescribed by law. The governor shall receive an annual salary of two thousand five hundred dollars for his services as governor and as superintendent of Indian affairs. The said chief justice and associate judges shall each receive an annual salary of eighteen hundred dollars. The secretary shall receive an annual salary of twelve hundred dollars. The said salaries shall be paid quarter-yearly, at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day, during their attendance at the sessions thereof, and three dollars each for every twenty miles travel in going to and returning from the said sessions, estimated according to the nearest usually traveled route. There shall be appropriated, annually, the sum of three hundred and fifty dollars, to be expended by the governor to defray the contingent expenses of the territory, and there shall also be appropriated, annually, a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws and other incidental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

Salaries.

Contingent expenses.

Rights, &c. under the territorial compact of July, 1787, extended to Wisconsin.

SEC. 12. *And be it further enacted*, That the inhabitants of the said territory shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people of the territory of the United States northwest of the river Ohio, by the articles of the compact contained in the ordinance for the government of the said territory, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven; and shall be subject to all the conditions and restrictions and prohibitions in said articles of compact imposed upon the people of the said territory. The said inhabitants shall also be entitled to all the rights, privileges, and immunities, heretofore granted and secured to the territory of Michigan, and to its inhabitants, and the existing laws of the territory of Michigan shall be extended over said territory, so far as the same shall not be incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed, by the governor and legislative assembly of the said territory of Wisconsin; and further, the laws of the United States are hereby extended over, and shall be in force in, said territory, so far as the same, or any provisions thereof may be applicable.

And also those secured to Michigan.

Legislative sessions, when held.

SEC. 13. *And be it further enacted*, That the legislative assembly of the territory of Wisconsin shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said session, or as soon thereafter as may by them be deemed expedient, the said governor and legislative assembly shall proceed to locate and establish the seat of government for said territory, at such place as they may deem eligible, which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly. And twenty thousand dollars, to be paid out of any money in the treasury, not otherwise appropriated, is hereby given to the said territory, which shall be applied by the governor and legislative assembly to defray the expenses of erecting public buildings at the seat of government.

Delegate to H. R. U. S.

SEC. 14. *And be it further enacted*, That a delegate to the house of representatives of the United States, to serve for the term of two years, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as have been granted to the delegates from the several territories of the United States to the said house of representatives. The first election shall be held at such time and place or places, and be conducted in such manner, as the governor shall appoint and direct. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given to the person so elected.

Provision respecting undetermined suits.

SEC. 15. *And be it further enacted*, That all suits, process, and proceedings, and all indictments and informations which shall be undetermined on the third day of July next, in the courts held by the additional judge for the Michigan territory, in the counties of Brown and Iowa; and all suits, process and proceedings, and all indictments and informations which shall be undetermined on the said third day of July, in the county courts of the several counties of Crawford, Brown, Iowa, Dubuque, Milwaukee, and Des Moines, shall be transferred to be heard, tried, prosecuted, and determined, in the district courts hereby established, which may include the said counties.

SEC. 16. *And be it further enacted*, That all causes which shall have been or may be removed from the courts held by the additional judge for the Michigan territory, in the counties of Brown and Iowa, by appeal or otherwise, into the supreme court for the territory of Michigan, and which shall be undetermined therein on the third day of July next, shall be certified by the clerk of the said supreme court, and transferred to the supreme court of said territory of Wisconsin, there to be proceeded in to final determination, in the same manner that they might have been in the said supreme court of the territory of Michigan.

$5,000 for the purchase of a library.

SEC. 17. *And be it further enacted*, That the sum of five thousand dollars be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, to be expended by and under the direction of the legislative assembly of said territory, in the purchase of a library for the accommodation of said assembly, and of the supreme court hereby established.

Approved 20th April, 1836.

AN ACT to divide the Territory of Wisconsin, and to establish the territorial government of Iowa.

Territory of Iowa erected;

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the third day of July next, all that part of the present territory of Wisconsin which lies west of the Mississippi river, and west of a line drawn due north from the head waters or sources of the Mississippi to the territorial line, shall, for the purposes of temporary government, be and constitute a separate territorial government by the name of Iowa; and that from and after the said third day of July next, the present territorial government of Wisconsin shall extend only to that part of the present territory of Wisconsin which lies east of the Mississippi river. And after the said third day of July next, all power and authority of the government of Wisconsin, in and over the territory hereby constituted shall cease: Provided, that nothing in this act contained shall be construed to impair the rights of persons or property, now appertaining to any Indians within the said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or anywise to affect the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty or law, or otherwise, which it would have been competent to the government to make if this act had never been passed: Provided, that nothing in this act contained shall be construed to inhibit the government of the United States from dividing the territory hereby established into one or more other territories, in such manner and at such times as congress shall, in its discretion deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States.

Authority of Wisconsin when to cease.

Proviso.

Proviso.

(Sections 2 to 16 inclusive, omitted.)

Causes remov from courts of

SEC. 17. *And be it further enacted*, That all causes which shall have been or may be removed from the courts held by the present

Wisconsin to supreme court of Iowa.

territory of Wisconsin, in the counties west of the Mississippi river, by appeal or otherwise, into the supreme court for the territory of Wisconsin, and which shall be undetermined therein on the third day of July next, shall be certified by the clerk of the said supreme court, and transferred to the supreme court of said territory of Iowa, there to be proceeded in to final determination, in the same manner that they might have been in the said supreme court of the territory of Wisconsin.

(Section 18 omitted.)

Term of members of council and house of representatives when to expire, &c.

SEC. 19. *And be it further enacted*, That from and after the day named in this act for the organization of the territory of Iowa, the term of the members of the council and house of representatives of the territory of Wisconsin, shall be deemed to have expired, and an entirely new organization of the council and house of representatives of the territory Wisconsin, as constituted by this act, shall take place as follows: As soon as practicable after the passage of this act, the governor of the territory of Wisconsin shall apportion the thirteen members of the council and twenty-six members of the house of representatives among the several counties or districts comprised within said territory, according to their population, as nearly as may be, (Indians excepted.) The first election shall be held at such time as the governor shall appoint and direct; and shall be conducted, and returns thereof made, in all respects, according to the provisions of the laws of said territory; and the governor shall declare the persons having the greatest number of votes to be elected, and shall order a new election when there is a tie between two or more person voted for, to supply the vacancy made by such tie. The persons thus elected shall meet at Madison, the seat of government, on such day as he shall appoint, but thereafter the apportioning of the representation in the several counties to the council and house of representatives according to population, the day of their election; and the day for the commencement of the session of the legislative assembly, shall be prescribed by law.

Appointment of members of council, &c.

First election, when held, &c.

Time and place of meeting

(Section 20 omitted.)

Approved June 12, 1838.

AN ACT to alter and amend the organic law of the Territories of Wisconsin and Iowa.

Governor to approve bills.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That every bill which shall have passed the council and house of repretatives of the territories of Iowa and Wisconsin, shall, before it become a law, be presented to the governor of the territory; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly by adjournment prevent its return, in which case it shall not be a law.

Bills not returned.

Construction of act.

SEC. 2. *And be it further enacted*, That this act shall not be so construed as to deprive congress of the right to disapprove of any law passed by the said legislative assembly, or in any way to impair or alter the power of congress over laws passed by said assembly.

Approved March 3, 1839.

AN ACT to define and establish the eastern boundary line of the territory of Iowa.

Eastern boundary of Iowa.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the middle or centre of the main channel of the river Mississippi shall be deemed, and is hereby declared, to be the eastern boundary line of the territory of Iowa, so far or to such extent as the said territory is bounded eastwardly by or upon said river: Provided, however, that the said territory of Iowa shall have concurrent jurisdiction upon the said Mississippi river with any other conterminous state or territory, so far or to such extent as the said river shall form a common boundary between the aforesaid territory of Iowa, and any other such conterminous state or territory.

Approved March 3, 1839.

AN ACT to authorise the election or appointment of officers in the territory of Wisconsin.

Legislative assembly authorized to provide for the election or appointment of certain officers.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the legislative assembly of the Territory of Wisconsin shall be, and are hereby, authorized to provide, by law, for the election or appointment of sheriffs, judges of probate, justices of the peace, and county surveyors, within the said territory, in such way or manner, and at such times and places as to them may seem proper; and after a law shall have been passed by the legislative assembly for that purpose, all elections or appointments of the above named officers, thereafter to be had or made, will be in pursuance of such law.

Term of service of the members

SEC. 2. *And be it further enacted*, That the members of both houses of the said legislative assembly of the territory of Wis-of the legislative assembly.

consin, shall upon the expiration of the terms of service for which the present members have been elected, be hereafter elected to serve for the same terms of service as that for which the members of the legislative assembly in Iowa are now elected.

Approved March 3, 1843.

AN ACT to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the Territory of Wisconsin.

Grant of land to aid in improving the Fox and Wisconsin rivers.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be and hereby is, granted to the State of Wisconsin, on the admission of such state into the union, for the purpose of improving the navigation of the Fox and Wisconsin rivers, in the Territory of Wisconsin, and of constructing the canal to unite the said rivers at or near the portage, a quantity of land, equal to one half of three sections in width, on each side of the said Fox river, and the lakes through which it passes, from its mouth to the point where the portage canal shall enter the same, and on each side of the said canal from one stream to the other, reserving the alternate sections to the United States, to be selected under the direction of the governor of said State, and such selection to be approved by the president of the United States. The said rivers, when improved, and the said canal, when finished, shall be and forever remain a public highway for the use of the government of the United States, free from any toll or other charge whatever for the transportation of the mails, or for any property of the United States, or persons in their service passing up or along the same: Provided, the said alternate sections, reserved to the United States, shall not be sold at a less rate than two dollars and fifty cents the acre: Provided, also, that no pre-emptive claim to the lands so reserved shall give the occupant, or any other person claiming through or under him, a right to said lands at any price less than the price fixed in this act, at the time of the settlement on said lands.

U. S. to use said rivers and canal free from toll.

Legislature to accept the grant and fix the price of the land at not less than $1.25 per acre.

SEC. 2. *And be it further enacted*, That as soon as the Territory of Wisconsin shall be admitted as a state into the union, all the lands granted by this act shall be and become the property of said state for the purpose contemplated in this act, and no other: Provided, that the legislature of said state shall agree to accept said grant upon the terms specified in this act, and shall have power to fix the price at which said lands shall be sold, not less than one dollar and twenty-five cents the acre; and to adopt such kind and plan of improvement on said route as the said legislature shall from time to time determine for the best interest of said state: Provided also, that the lands hereby granted shall not be conveyed or disposed of by said state, except as said improvements shall progress; that is, the said state may sell so much of said lands as shall produce the sum of twenty thousand dollars, and then the sales shall cease until the governor of said state shall certify the fact to the president of the United States that one half of said sum has been expended upon said improvements, when the said state may sell and dispose of a quantity of said lands sufficient to reimburse the amount expended; and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure certified in the manner herein mentioned.

Title of purchasers under this act shall be valid.

SEC. 3. *And be it further enacted*, That the said improvement shall be commenced within three years after the said state shall be admitted into the union, and completed within twenty years, or the United States shall be entitled to receive the amount for which any of said lands may have been sold by said state: Provided that the title of purchasers under the sales made by the state, in pursuance of this act, shall be valid.

Approved, August 8, 1846.

AN ACT to enable the People of Wisconsin Territory to form a Constitution and State Government, and for the admission of such state into the Union.

The people of Wisconsin authorized to form a constitution and state government.

Boundaries.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the people of the territory of Wisconsin be, and they are hereby authorized to form a constitution and state government, for the purpose of being admitted into the Union on an equal footing with the original states in all respects whatsoever, by the name of the State of Wisconsin, with the following boundaries, to wit: Beginning at the northeast corner of the state of Illinois, that is to say, at a point in the centre of Lake Michigan, where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence running with the boundary line of the state of Michigan through Lake Michigan, Green Bay, to the mouth of the Menomonie river; thence up the channel of said river to the Brule river; thence up said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule in a direct line to the centre of the channel between Middle and South islands, in the Lake of the Desert; thence in a direct line to the head waters of the Montreal river, as marked upon the survey made by Captain Cramm; thence down the main channel of the Montreal river to the middle of Lake Superior: thence through the centre of Lake Superior to the mouth of the St. Louis river; thence up the main channel of said river to the first rapids in the same, above the Indian village according to Nicollet's map; thence due south to the main branch of the river St. Croix; thence down the main channel of the said river to the Mississippi; thence down the centre of the main channel of that river to the north-west corner of the State of Illinois; thence due east with the northern boundary of the State of Illinois to the place of beginning, as established by "An act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such State into the Union on an equal footing with the original states," approved April eighteenth, eighteen hundred and eighteen.

Jurisdiction of islands in Brule and Menomonie rivers.

Proviso.

Sec. 2 *And be it further enacted*, That, to prevent all disputes in reference to the jurisdiction of islands in the said Brule and Menomonie rivers, the line be so run as to include within the jurisdiction of Michigan, all the islands in the Brule and Menomonie rivers, (to the extent in which said rivers are adopted as a boundary,) down to, and inclusive of, the Quinesec falls of the Menomonie; and from thence the line shall be so run as to include within the jurisdiction of Wisconsin all the islands in the Menomonie river, from the falls aforesaid down to the junction of said river with Green Bay: Provided, that the adjustment of boundary as fixed in this act between Wisconsin and Michigan shall not be binding on Congress unless the same shall be ratified by the state of Michigan on or before the first day of June, one thousand eight hundred and forty-eight.

To have concurrent jurisdiction on the Mississippi and other rivers.

Navigable waters to be common highways.

Sec. 3. *And be it further enacted*, That the said state of Wisconsin shall have concurrent jurisdiction on the Mississippi and all other rivers and waters bordering on the said State of Wisconsin, so far as the same shall form a common boundary to said state and any other state or states now or hereafter to be formed or bounded by the same; and said river and waters, and the navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said state as to all other citizens of the United States, without any tax, duty, impost, or toll therefor.

Laws of United States extended to said state.

Shall constitute one judicial district.

A district court to be held.

Sessions of the court, and powers and jurisdiction of the judge.

Shall appoint a clerk, &c.

Fees.

Compensation of judge.

Sec. 4. *And be it further enacted*, That from and after the admission of the state of Wisconsin into the Union, in pursuance of this act, the laws of the United States which are not locally inapplicable, shall have the same force and effect within the State of Wisconsin as elsewhere within the United States; and said state shall constitute one district, and be called the district of Wisconsin; and a district court shall be held therein, to consist of one judge, who shall reside in the said district and be called a district judge. He shall hold at the seat of government of said state two sessions of said court annually, on the first Mondays in January and July, and he shall in all things have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky district, under an act entitled, "An act to establish the judicial courts of the United States." He shall appoint a clerk for said district, who shall reside and keep the records of said court at the place of holding the same; and shall receive for the services performed by him, the same fees to which the clerk of the Kentucky district is by law entitled for similar services. There shall be allowed to the judge of the said district court the annual compensation of fifteen hundred dollars, to commence from the date of his appointment, to be paid quarterly at the treasury of the United States.

District attorney to be appointed.

Compensation and fees.

Sec. 5. *And be it further enacted*, That there shall be appointed in said district, a person learned in the law to act as attorney of the United States, who in addition to the stated fees, shall be paid the sum of two hundred dollars annually by the United States, as a full compensation for all extra services; the said payment to be made quarterly at the treasury of the United States. And there shall also be appointed a marshal for said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed and allowed to marshals in other districts; and shall, moreover, be allowed the sum of two hundred dollars annually as a compensation for all extra services.

Marshal to be appointed.

Duties, fees, and compensation.

To be entitled to two representatives in Congress.

SEC. 6. *And be it further enacted*, That until another census shall be taken and apportionment made, the State of Wisconsin shall be entitled to two representatives in the congress of the United States.

Propositions submitted to the convention, &c.

SEC. 7. *And be it further enacted*, That the following propositions are hereby submitted to the convention which shall assemble for the purpose of forming a constitution for the State of Wisconsin, for acceptance or rejection; and if accepted by said convention, and ratified by an article in said constitution, they shall be obligatory on the United States;

1. That section numbered sixteen, in every township of the public lands in said state, and, where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said state for the use of schools.

2. That the seventy-two sections or two entire townships of land set apart and reserved for the use and support of a university by an act of congress, approved on the twelfth day of June, eighteen hundred and thirty eight, entitled, "An act concerning a seminary of learning in the territory of Wisconsin," are hereby granted and conveyed to the state, to be appropriated solely to the use and support of such university, in such manner as the legislature may prescribe.

3. That ten entire sections of land to be selected and located under the direction of the legislature, in legal divisions of not less than one quarter section, from any of the unappropriated lands belonging to the United States within the said state, are hereby granted to the said state for the purpose of completing the public buildings of the said state, or for the erection of others at the seat of government, under the direction of the legislature thereof.

4. That all salt springs within said state, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the state for its use; the same to be selected by the legislature thereof within one year after the admission of said state; and when so selected to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: Provided, that no salt spring or land, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall by this section, be granted to said state.

5. That five per cent of the net proceeds of sales of all public lands lying within the said state, which have been or shall be sold by congress, from and after the admission of said state into the Union, after deducting all the expenses incident to the same, shall be paid to the said state for the purpose of making public roads

and canals in the same, as the legislature shall direct: Provided, that the foregoing propositions herein offered are on the condition that the said convention which shall form the constitution of said state shall provide by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that said state shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations congress may find necessary for securing the title in such soil to bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents.

Approved, August 6th, 1846.

AN ACT for the admission of the State of Wisconsin into the Union.

Whereas the people of the territory of Wisconsin did, on the first day of February, eighteen hundred and forty-eight, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and state government, which said constitution is republican, and said convention having asked the admission of said territory into the Union as a state, on an equal footing with the original States:

State of Wisconsin admitted into the Union.

SECTION. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembld*, That the state of Wisconsin be, and is hereby, admitted to be one of the United States of America, and is hereby admitted into the Union on an equal footing with the original states, in all respects whatever, with the boundaries prescribed by the act of Congress, approved August sixth, eighteen hundred and forty-six, entitled, "An act to enable the people of Wisconsin territory to form a constitution and state government, and for the admission of such state into the Union."

Boundaries.

Assent of congress given to certain resolutions of the convention of said state, and certain acts of Congress therein referred to amended.

SEC. 2. *And be it further enacted*, That the assent of congress is hereby given to the first, second, fourth, and fifth resolutions adopted by said convention, and appended to said constitution; and the acts of congress, referred to in the said resolutions, are hereby amended, so that the lands granted by the provisions of the several acts referred to in the said first and fourth resolutions, and the proceeds of said lands, and the five per centum of the net proceeds of the public lands therein mentioned, shall be held and disposed of by said state, in the manner and for the purposes recommended by said convention; and so that, also, the lands reserved to the United States by the provisions of the act entitled, "An act to grant a quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the territory of Wisconsin;" and, also the even numbered sections reserved by the provisions of the act entitled, "An act to grant a quantity of land to the territory of Wisconsin, for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock river," shall be offered for sale at the same minimum price, and subject to the same rights of pre-emption as other public lands of the United States:—Provided, however, That no person shall be entitled to a pre-emption by reason of the settlement and cultivation of any quarter section or other subdivision of said even numbered sections, which tract, before the commencement of such settlement, shall have been claimed by any other person cultivating and improving the same in good faith, and which shall have continued to be claimed, cultivated and improved in like good faith by such person, his representatives or assigns, until the sale of said tract, and of which said prior claim, cultivation and improvement, the person so claiming pre-emption shall have had notice at the time of his entry and settlement; neither shall any pre-emption be allowed to any tract, to the injury of any person or of the representatives or assigns of any person claiming and occupying the same or any part thereof in good faith, in his or her right, at the passage of this act, and owning valuable cultivation or improvements thereon, which cultivation or improvements shall have been assigned by the person so claiming pre-emption, or if commenced subsequently to the entry and settlement of such person, shall have been made with his consent or acquiescence: And provided further, that the liabilities incurred by the territorial government of Wisconsin, under the act entitled, "An act to grant a quantity of land to the territory of Wisconsin, for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock river," hereinbefore referred to, shall be paid and discharged by the State of Wisconsin.

Proviso.

Ib.

Purchasers of certain tracts at $2.50 per acre to receive certificates of the amount of excess paid over $1,25 per acre, &c.

SEC. 3. *And be it further enacted*, That the purchasers of any tract of said even numbered sections mentioned in the preceding section, and sold since the reservation thereof, at the minimum price of two dollars and fifty cents per acre, shall be entitled to receive from the commissioner of the general land office, a certificate of the quantity of land so purchased, and of the amount of the excess paid therefor, over and above the value of said land, at the rate of one dollar and twenty-five cents per acre; which certificate, to the amount of such excess, shall be receivable from the holder thereof or his assigns, in like manner as so much money, in payment of the public lands of the United States. That, in the event of the death of any such purchaser before the issuing of such certificate, the same shall be issued in favor of the lawful representatives of such purchaser.

Terms of the U. S district court for district of Wisconsin.

SEC. 4. *And be it further enacted*, That the judge of the district court for the district of Wisconsin shall hold a term of said court in each year at the seat of government, to commence on the first Monday of July, and another term of said court in each year at Milwaukee, to commence on the first Monday of January. He shall also have power to hold special terms for the trial of causes, and for the determination of all suits or proceedings in said courts, at either of the aforesaid places at his discretion, as the nature and amount of the business may require. The said court shall be open at all times for the purpose of hearing and deciding cases of admiralty and maritime jurisdiction, so far as the same can be done without a jury. The records and papers of said court may be

Said court to have maritime and admiralty jurisdiction.

kept at either of the places herein designated for the holding of said court, as the judge in his discretion shall direct.

Clerks of the district courts of the Territory of Wisconsin shall certify and transmit to the clerk of the district court of Iowa, all records, &c.

SEC. 5. *And be it further enacted*, That the clerks of the district courts of the territory of Wisconsin shall, before their term of office expires, certify under seal, and transmit to the clerk of said court, all records of all unsatisfied judgments and of suits pending in said courts respectively, attaching thereto all papers connected therewith in all cases arising under the laws or constitution of the United States, or to which the United States shall be a party, and they shall forward the same to the clerk of said district court of the State of Wisconsin, who shall enter the same in his docket, and the said district court shall proceed therein to final judgment and execution, as if such suits or proceedings had originally been brought in said court.

Clerk of supreme court of Territory of Wisconsin to deliver over to clerks of said district courts, certain records, &c.

SEC. 6. *And be it further enacted*, That the clerk of the supreme court of the territory of Wisconsin shall deliver over to the clerks of said district court, all records and papers in the office of the clerk of the said supreme court relating to proceedings in bankruptcy under the late bankrupt law of the United States. He shall also certify under seal, and deliver to said clerk, all records of judgments and of proceedings in suits pending, and all papers connected therewith, in cases arising under the constitution and laws of the United States.

Said state to be entitled to three representatives in Congress.

SEC. 7. *And be it further enacted*, That from and after the fourth day of March, eighteen hundred and forty-nine, and until another census and apportionment shall be made, the State of Wisconsin shall be entitled to three representatives in the congress of the United States.

Approved May 29, 1848.

ABSTRACT of the laws of the United States in relation to the naturalization of aliens. (a)

Who may be admitted as citizens.

SECTION 1. Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

Form of declaration; two years prior to admission, and before whom made.

SEC. 2. *First*: That he shall have declared, on oath or affirmation, before the supreme, superior, district or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts, (b) two (c) years at least before his admission, that it was, bona fide, his intention to become a citizen of the United States, and to renounce forever, all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject. (d)

(a) 6. Cranch 176; 2 Whea., 259; 4 Peters.

(b) Act May 26th, 1824, sec. 3. Story, 1973, 393; 8 Cranch, 335; 7 Cranch, 420; 2 Galli., C.

(c) *Ibid.* sec. 4, C. Rep. 11; Peters' C. C. Rep. 457.

(d) Act of April 14th, 1802. Story, 850.

Certain persons exempted from preceding conditions.

SEC. 3. From this condition are exempted, any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, 1798, and the fourteenth day of April, 1802, and who has continued to reside within the same. (*a*)

Admission of minors who arrive in United States when not over 18 years of age.

SEC. 4. Any alien, being a free white person and a minor, under the age of twenty-one years who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the second section, three years previous to his admission; but, such alien shall make the declaration required therein, at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that for three years next preceding, it has been the bona fide intention of such alien to become a citizen of the United States; and shall in all other respects, comply with the laws in regard to naturalization. (*b*)

When widow and children of deceased alien deemed citizens.

SEC. 5. When any alien, who shall have complied with the condition specified in section second, and who shall have pursued the directions prescribed in the second section of the act of April 14, 1802,* may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law. (*c*)

Oath upon admission.

SEC. 6. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate, state or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. (*d*)

Proof of character and residence before admission; and by whom to be made.

SEC. 7. The court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction that, during that time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. The oath of the applicant shall, in no case, be allowed to prove his residence. (*e*)

* The second section of the act of April 14, 1802, required an alien when he arrived in the United States, to have his name registered, &c., with the clerk of the proper court, &c. This section was repealed by the act of May 24, 1828. Story, 850, 2145.

(*a*) Act of March 26th, 1804, sec. 1. Story, 942.

(*b*) Act of May 26th, 1824, sec. 1. Story, 1973,

(*c*) Act March 26th, 1804, sec. 2. Story, 942.

(*d*) Act 14th April, 1802, sec. 1. Story, 850.

(*e*) Act 14th April, 1802, sec. 1. Story, 850.

Alien to renounce hereditary title, record thereof; to be citizen of country at peace with United States

SEC. 8. In case the alien applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court; provided, that no alien, who shall be a native citizen, denizen or subject of any country, state or sovereign with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States. (*a*)

As to aliens residing in the United States in 1812.

SEC. 9. But persons resident within the United States or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had, before that day, made a declaration according to law, of their intention to become citizens of the United States; or who, by the existing laws of the United States, were, on that day, entiled to become citizens, without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies at the times, and in the manner prescribed by the laws heretofore passed on that subject; provided, that nothing herein contained, shall be taken or construed to interfere with, or prevent the apprehension and removal, agreeably to law, of any alien enemy, at any time previous to the actual naturalization of such alien. (*b*)

As to aliens residing in the United States between 1802 and 1812.

SEC. 10. Any alien, being a free white person, who was residing within the limits, and under the jurisdiction of the United States between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen; provided, that whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses; and such continued residence within the limits, and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided, for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. (*c*)

As to aliens re-

SEC. 11. Nothing in the foregoing section ten contained, shall

---

(*a*) Act 14th April, 1802, sec. 1. Story, 850.
(*b*) Act of July 30, 1813. Story, 1354.
(*c*) Act May 24, 1828. Story, 2145; and see Story 1354.

siding in the United States between 1798 and 1802; what proof of residence required, and how set forth in record to render admission valid.

be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States, according to section three. Whenever any person, without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. (*a*)

What children of aliens, &c. deemed citizens. Proscribed persons not to be admitted.

Sec. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years, at the time of their parents' being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States. The right of citizenship shall not descend to persons whose fathers have never resided within the United States. And no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen, without the consent of the legislature of the state in which such person was proscribed.(*b*) Children of persons naturalized before the fourteenth of April, 1802, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, 1802, to be considered as citizens of the United States.(*c*)

As to aliens residing in the Unit-

Sec. 13. Any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth

---

(*a*) Act 22d March, 1816, sec. 2. Story, 1539.

(*b*) Campbell v. Gordon, 6 Cr, 176. Act 14th April, 1802, sec. 4. Story 850.

(*c*) Campbell v. Gorden, 6 Cr. 176. Story 850.

ed States prior to 1795.

day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least, within and under the jurisdiction of the United States, and one year at least immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate, state or sovereignty whereof he was before a citizen or subject; and moreover, on its appearing to the satisfaction of the court that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making, in the court, an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof.(*a*)

What state courts may admit aliens.

Sec. 14. Every court of record, in any individual state, having common law jurisdiction, and a seal or clerk or prothonotary, shall be considered as a district court, within the meaning of the naturalization act; and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.(*b*)

Five years residence required before admission of alien who arrive in U. S. after 1815.

Sec. 15. No person who shall arrive in the United States, after February the seventeenth, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States.(*c*)

AN ACT respecting Fugitives from Justice, and persons escaping from the service of their masters.

In Congress, February 12, 1793.

The executive of any state or territory may, on application, cause fugitives from justice to be arrested and given up to the proper authority.

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whenever the executive authority of any state in the Union, or either of the territories north west or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory, to which such person shall

(*a*) Act April 14th, 1802, sec. 1. Story, 850.
(*b*) Act April 14th, 1802, sec. 3.
(*c*) Act March 3d, 1813, sec. 12. Story, 1304.

have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any state or territory as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic, by the governor or chief magistrate of the state or territory from whence the person so charged, fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent, when he shall appear; but if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

Agents appointed to receive fugitives into custody may transport the same.

SEC. 2. *And be it further enacted*, That any agent appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons shall, by force, set at liberty, or rescue the fugitive from such agent, while transporting, as aforesaid, the person or persons so offending, shall, on conviction thereof, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

Fugitives from labor or service may be apprehended in the state or territory to which they may have fled.

SEC. 3. *And be it further enacted*, That when a person, held to labor in any of the United States, or in either of the territories on the north west or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the state, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made; and, upon proof to the satisfaction of such judge or magistrate, either by oral testimony, or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the state or territory from which he or she fled.

Persons hindering or obstructing the apprehension of fugitives from labor to be fined.

SEC. 4. *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared, or shall harbor or conceal such person, after notice that he or she was a fugitive from labor as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars; which penalty may be recovered by, and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving moreover to the person claiming such labor or service, his right of action for, or on account of the said injuries, or either of them.

AN ACT to prescribe the mode in which the public acts, records and judicial proceedings in each State shall be authenticated, so as to take effect in every other State.

In Congress, May 26, 1790.

Legislative acts authenticated by state seal.

Judicial proceedings by clerk, seal, and certificate of judge.

Faith and credit in courts within the United States.

SECTION 1. *Be it enacted, &c.*, That the acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto: that the records and judicial proceedings of the courts of any state shall be proved or admitted, in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every court within the United States, as they have, by law or usage, in the courts of the state from whence the said records are, or shall be taken.

AN ACT supplementary to the act entitled "An act to prescribe the mode in which the public acts, records and judicial proceedings, in each State, shall be authenticated, so as to take effect in every other State."

In Congress, March 27, 1804.

Records and exemplifications of office books, kept in any public office, seal, certificate, &c.

SECTION 1. *Be it enacted, &c.*, That, from and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office of any state, not appertaining to a court, shall be proved, or admitted, in any other court or office in any other state, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, or district, as the case may be, in which such office is or may be kept; or of the governor, the secretary of state, the chancellor, or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the governor, the secretary of state, the chancellor, or keeper of the great seal, it shall be under the great seal of the state in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have, by law or usage, in the courts or offices of the state from whence the same are, or shall be taken.

Records, &c. to have faith and credit given to them, &c.

Sec. 2. That all the provisions of this act, and the act to which this act is a supplement, shall apply, as well to the public acts, records, office books, judicial proceedings, courts and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, jndicial proceedings, courts and offices of the several states.

The provisions of this act, &c. to apply to the public acts, &c. of the states, &c.

CORRECTIONS.

The following corrections of clerical mistakes occurring in the enrolled laws of the state of Wisconsin published in this volume, have been made in the printed text, to wit:

Page 50, Sec. 1, line 18, “*branch*” inserted for “*channel.*”
84, Sec. 19, line 7 of subdivision 9, “*state*” inserted.
85, Sec. 25, lines 5 and 6, “*the fifth subdivision of*” inserted.
106, Sec. 90, line 3, “*his*” inserted for “*the.*”
106, Sec. 90, line 3, “*designated by him in such notice*” after “*office*” struck out; also “*so*” in same line and section, before “*required.*”
110, Sec. 112, line 3, “*and all moneys in his hands by virtue of his office*” inserted.
129, Sec. 78, “*by law*” added to end of section.
131, Sec. 92, lines 2 and 3, “*and at such election justices of the peace*” inserted.
132, Sec. 8, line 7, “*or*” before “*ward*” struck out, and “*or school district*” inserted after “*ward.*”
163, Sec. 116, line 2, “*upon any lands*” inserted.
164, Sec. 122, line 4, “*one hundred and one hundred and one*” inserted for “*one hundred and one and one hundred and two.*”
165, Sec. 129, line 8, “*deemed*” inserted for “*declared.*”
168, Sec. 6, line 8, “*on the inhabitants of the district*” inserted.
173, Sec. 41, line 7, “*on*” inserted for “*in*” after “*money.*”
183, Sec. 103, line 3, “*any*” inserted for “*such,*” before bridge.
191, Sec. 12, line 6, “*tenth*” inserted for “*ninth.*”
208, Sec. 3, line 14, “*sureties*” inserted for “*securities.*”
211, Sec. 3, line 3, “*as hereinafter provided*” inserted.
212, Sec. 9, line 6, “*such*” inserted before “*land.*”
213, Sec. 19, lines 3 and 4, “*purchase money and*” inserted.
213, Sec. 20, line 3, “*possession of the*” inserted.
225, Sec. 109, line 1, “*act entitled an*” inserted.
225, Sec. 110, line 8, “*paid*” added to end of section.
231, Sec. 4, line 4, “*and,*” after “*members,*” struck out; and “*such*” before “*donations,*” in line 5 of same Sec. struck out; and “*and,*” after “*students,*” in line 5 of same Sec. inserted.
248, Sec. 5, line 7, “*of this section*” inserted.
256, Sec. 1, line 4, “*or,*” after “*village,*” struck out.
257, Sec. 3, line 10, “*of,*” after “*fine,*” inserted; and in line 11, of same section, “*one*” inserted for “*five,*” before hundred.
257, Sec. 4, line 3, “*complaint*” inserted for “*indictment.*”
258, Sec. 3, line 1, “*county supervisors*” inserted for “*officer or;*” and in same line and Sec., “*or proprietors*” inserted; and in line 2 of same Sec., “*themselves*” inserted for “*himself.*”
258, Sec. 7, line 6, “*county supervisors*” inserted for “*officers.*”
324, Sec. 37, line 3, “*alienating*” inserted for “*aliening.*”
326, Sec. 60, line 5 “*shall become entitled to the money so secured to be paid,*” added to end of section.
327, Sec. 8, line 6, “*or*” inserted before “*justice,*” and in same line and Sec., “*or master in chancery,*” after “*peace,*” struck out.
329, Sec. 24, line 2, “*by-law*” inserted for “*in this chapter.*”
342, Sec. 9, lines 2 and 3, “*supervisors of the town*” inserted for “*superintendents of the poor of the county.*”
342, Sec. 10, lines 4 and 5, “*supervisors of the town*” inserted for “*superintendents of the poor.*”
350, Sec. 41, line 3, “*supervisors of the town*” inserted for “*superintendents of the poor of the county..*”
352, Sec. 54, line 7, “*administrator*” inserted.
353, Sec. 5. This section, which is not in the enrolled act, was evidently omitted by mistake. It is copied from the law from which chapter 66, on wills, was compiled, and inserted here under the belief that this or a similar provision will hereafter be enacted. The necessity for such a provision, and the importance of having it inserted in its proper connection are too obvious to require explanation. Should the legislature hereafter see fit to give it force as law, it will then be in its appropriate place; if not, its presence there can do no harm.

Page 369, Sec. 1, line 1, of subdivision 2, “*whole*” inserted for “*real.*”
376, Sec. 51, line 2, “*preceding*” inserted.
383, Sec. 23, line 4, “*examine and*” struck out before “*allow.*”
389, Sec. 8, line 2, “*title*” inserted for “*chapter.*”
390, Secs. 3 and 4, line 2, in each section, “*title*” inserted for “*chapter.*”
390, Secs. 5, 6 and 7, line 1 in each section, “*title*” inserted for “*chapter.*”
409, Sec. 1, line 1, “*that*” struck out before “*The several,*” and in same line and section, “*shall*” inserted for “*be.*”
414, Sec. 7, line 7, “*in*” inserted before “*action.*”
416, Sec. 20, line 4, “*at*” inserted for “*in,*” after “*judge.*”
418, Sec. 36, last line but one, “*and*” inserted for “*that,*” and “*shall*” inserted after “*the decree.*”
427, Sec. 103, line 2, “*proper officer*” inserted for “*master.*”
428, Sec. 112, line 5, “*wherein*” inserted for “*whenever.*”
430, Sec. 16, line 5, “*judge of the*” inserted
430, Sec. 17, line 4, “*judge of the*” inserted.
443, Sec. 11, line 1 of subdivision 4, “*there*” inserted for “*the*” before “*nature.*”
444, Sec. 11, line 2 of subdivision 10, “*and*” struck out after “*damages.*”
445, Sec. 16, line 6, “*to be*” struck out after “*summons.*”
445, Sec. 21, line 2 of subdivision 2, “*person*” inserted.
447, Sec. 31, line 11, “*of*” before “*one hundred*” struck out.
447, Sec. 32, line 11, “*in the*” inserted after “*o'clock*” and “*as aforesaid*” after “*himself*” struck out.
447, Sec. 32, line 13, “*of*” after “*damages*” struck out.
447, Sec. 33, line 7, “*forthwith*” inserted after “*bring.*”
447, Sec. 33, line 10, “*of*” after “*damage*” struck out.
448, Sec. 35, line 1, “*unless*” inserted for “*until.*”
449, Sec. 43, line 5, “*or*” inserted before “*accompanied.*”
451, Sec. 58, line 6, “*against*” inserted after “*judgment.*”
452, Sec. 63, line 3, “*oath*” inserted after “*own.*”
453, Sec. 72, line 5, “*if*” inserted after “*trial.*”
454, Sec. 78, line 2, “*shall*” inserted after “*evidence.*”
456, Sec. 92, lines 5 and 6, “*to law*” inserted after “*according.*”
456, Sec. 94, lines 11 and 12, “*until they have agreed on their verdict*” inserted.
456, Sec. 97, line 8, “*judgment*” inserted for “*verdict.*”
457, Sec. 101, “*or*” inserted at the end of subdivision 1.
457, Sec. 101, “*or*” inserted at the end of subdivision 7.
457, Sec. 103, line 17, “*of*” after “*damage*” struck out.
461, Sec. 127, line 5, “*it shall appear*” inserted.
461, Sec. 128, line 4, “*if*” inserted after “*or.*”
461, Sec. 129, line 3, “*and*” after “*summons*” struck out.
464, Sec. 151, line 5, “*replevied*” inserted after “*chattels.*”
466, Sec. 159, line 3, “*sureties*” inserted for “*securities.*”
466, Sec. 164, line 1, “*in a justice's court*” inserted.
468, Sec. 176, lines 3 and 4, “*in replevin or*” inserted after “*commenced.*”
468, Sec. 176, line 4, “*or replevin for*” after “*against*” struck out.
473, Sec. 202, line 4, “*officer*” inserted for “*constable.*”
473, Sec. 203, line 1, “*officer*” inserted for “*constable.*”
473, Sec. 206, line 3, “*shall*” inserted after “*person.*”
474, Sec. 215, line 2, “*into*” inserted after “*entering.*”
478, Sec. 242, line 3, “*thereon*” after “*proceed*” struck out.
479, Sec. 249, line 1 of subdivision 3, “*of*” inserted for “*to*” after “*disobedience.*”
479, Sec. 253, line 7, “*Esq.*” struck out after “*J. P.*”
480, Sec. 256, line 20, “*until*” inserted after “*or.*”
480, Sec. 262, line 4, “*by law*” inserted after “*prescribed.*”
485, Sec. 10, line 1, “*shall*” inserted after “*court.*”
488, Sec. 34, line 4, “*sureties*” inserted for “*securities.*”
489, Sec. 40, line 13, “*the said*” inserted after “*apprehend.*”
497, Sec. 27, line 8, “*abated*” inserted for “*non-suited.*”
497, Sec. 30, line 3, “*judge*” inserted for “*jury.*”
501, Sec. 4, line 4, “*supreme*” struck out before “*court commissioner.*”
501, Sec. 6, line 3, “*such*” before “*notice*” struck out.
501, Sec. 7, line 7, “*obligor*” inserted for “*indorser.*”
510, Sec. 11, line 1, “*demandants*” inserted for “*defendants.*”
511, Sec. 3, line 8, “*chairman*” inserted for “*president.*”
533, Sec. 1, line 4, “*rendered*” inserted for “*recorded.*”
540, Sec. 53, line 6, “*to*” inserted before “*sale.*”
550, Sec. 120, line 5, “*appear*” inserted.
556, Sec. 48, line 3, “*proper officer*” inserted for “*master.*”
560, Sec. 12, line 4, the prefix “*dis*” stricken from “*allowing.*”
589, Sec. 11, line 8, “*fees*” inserted for “*services.*”
606, Sec. 6, line 7, “*be*” inserted before “*served.*”
627, Sec. 7, line 9, “*or county court*” inserted.
644, Sec. 23, line 1, “*two*” inserted before “*preceding*” and the letter “*s*” struck from “*section*” in same line.
653, Sec. 12, line 2, “*has*” inserted for “*is*” before “*paid.*”
658, Sec. 29, line 3, “*circuit*” inserted for “*county.*”
658, Sec. 30, line 2, “*the preceding section*” inserted for “*this chapter.*”

Page 658, Sec. 34, line 1, “*shall be*” inserted after “*order.*”
661, Sec. 2, line 1, “*and clerks of counties*” after “*courts*” struck out, and “*and county*” inserted before “*courts,*” and “*respectively*” after “*them*” in line 2, of same section struck out.
662, Sec. 2, line 4, from the end of the section, “*court*” inserted after “*county.*”
666, Sec. 6, “*of the county*” added to the end of the section.
675, Sec. 33, line 14, “*motion*” inserted after “*enumerated.*”
682, Sec. 2, line 13, “*years*” inserted after “*fourteen.*”
689, Sec. 5, line 5, “*of this chapter*” inserted.
689, Sec. 11, line 5, “*he*” before “*shall*” struck out.
692, Sec. 27, line 2, “*the last preceding section*” inserted for “*this chapter.*”
693, Sec. 29, lines 7 and 8, “*of the twenty-sixth and twenty-seventh sections*” inserted after “*meaning.*”
693, Sec. 30, lines 1 and 2, “*mentioned in the twenty-sixth section of this chapter*” inserted after “*person*” in the first line.
695, Sec. 42, line 2, “*or*” inserted after “*public.*”
696, Sec. 46, line 8, “*dollars*” inserted after “*fifty.*”
696, Sec. 48, lines 2 and 3, “*mentioned in the preceding section*” inserted for “*in this chapter.*”
696, Sec. 51, line 3, “*the preceding section*” inserted for “*this chapter.*”
698, Sec. 9, line 7, “*the secretary of the treasury, or of*” inserted.
703, Sec. 21, lines 9 and 10, “*other manner, he shall be punished by imprisonment in the county*” inserted.
707, Sec. 14, line 6, “*forfeit his office*” inserted.
708, Sec. 6, line 7, “*section*” inserted for “*chapter.*”
711, Sec. 6, line 4, “*true*” inserted before “*name.*”
729, Sec. 9, line 7, “*to*” inserted before “*enter.*”
730, Sec. 7, lines 9 and 10, “*execution to be done, and the sheriff shall thereupon cause*” inserted.
747, Sec. 1, lines 9 and 10, “*and also all other acts and parts of acts in this chapter specified*” inserted.
771, Sec. 35, line 11, “*offer*” inserted for “*name.*”
772, Sec. 39, line 4, “*shall be entitled to a pre-emption therein*” inserted.

INDEX.

- ABANDONMENT,
  - when plaintiff shall be deemed to have abandoned claim of title to premises, 570.
- ABATEMENT,
  - of suits against transportation companies, 496.
  - pleas in, by joint drawers, &c., of bill or note, 504.
  - of action of ejectment by death, 565.
  - of nuisance, judgment for, 583.
  - when death of party not to abate suit, 508 to 510.
  - ib. as to insanity of party, 510.
  - when death of public officer or trustee not to abate suit, 510.
  - misnomer of corporation to be pleaded in, 593.
  - plea in, to indictment, to be verified, 725.
- ABBREVIATIONS,
  - may be used in assessment roll, &c., 141.
  - what may be used in writs, records, &c., 440.
- ABETTORS, 711.
  - (See *Accessories.*)
- ABDUCTION,
  - of persons, 687.
- ABORTION,
  - attempt to procure, how punished, 683, 684.
- ABSCONDING,
  - father, mother or husband, proceedings against, 237, 238.
  - how property of, may be seized and disposed of, 238.
  - when to be restored, 238.
- ABSENT, CONCEALED AND NON-RESIDENT DEFENDANTS,
  - proceedings against in chancery, 415, 416.
  - when complainant to give bond in case of decree against, 417.
  - when and how may be heard after decree against him, 418.
- ACADEMIES,
  - portion of income of school fund to be applied to support of, 34.
- ACCEPTANCE,
  - of bill of exchange to be in writing, 263.
- ACCESSORIES,
  - to felony, before the act, 711.
  - how tried, 712.
  - after the act, 712.
  - how tried, 712.
- ACCOUNT,
  - money of, what to be, 264.
  - proceedings to compel, by persons entrusted with estate, &c., 367.
- ACCOUNT BOOKS,
  - when and how may be introduced as evidence, 526, 527.
- ACCOUNTS,
  - persons presenting to secretary of state to be sworn, 84.
  - statements of, to be rendered by persons receiving public moneys, &c., 84.
  - presented to county board, to be verified by affidavit, 97, 239.
  - duties of clerk of supervisors as to, 99.
  - duties of town clerk as to, 126, 128.
  - presented to town board, to state each item, 127.
  - audited by town board, how to be paid, 128.
  - to be opened by treasurer with each purchaser of school lands, 217.
  - to be kept by commissioners of school lands, 223.
  - in public offices, in what currency to be kept, 264.
  - against villages, how to be made out, audited and allowed, 296, 297.
  - same to be numbered, 297.
  - when same not to be allowed, 297.
  - how paid, and to be filed, 297.
  - rendering of, by executors and administrators, 378, 379.
  - of ward, guardian to settle, 401.
  - of guardians, how may be allowed, 403.
- ACCUMULATION,
  - of rents and profits of lands, how may be directed by will or deed, 316, 317.
  - when rents and profits may be applied to education, &c., of infant, 317.
- ACCUSED,
  - rights of the, 17, 20, 681, 682, 718, 720, 724, 726.
  - to recognize in case of exceptions or report, 728.
- ACKNOWLEDGMENT,
  - of deeds, how made, 327, 328, 330.
  - of satisfaction of mortgage, to be recorded, 331.
  - effect of, taken by commissioners in other states, 332.
  - of satisfaction of judgment, 536.
  - how satisfaction acknowledged, 537.
- ACQUITTAL,
  - former, when a bar, 682.
  - of prisoner for insanity, to be stated to court, 727.
  - of prisoner, he not liable for fees, 727.
- ACTIONS,
  - to be continued, as if no change in government, 38.
  - by or against counties, how to be conducted, 94, 95.
  - by or against towns, to be in name of town, 119.
  - same may be prosecuted before justices of the peace, 119.

ACTIONS,
- by or against school districts, how prosecuted, 203.
- not to be maintained for liquor bills, 242.
- in relation to sale of spirituous liquors, 242, 243.
- on orders for the support of bastards, by whom maintained, 246.
- when town supervisors may prosecute, 246.
- of debt or assumpsit, may be brought to recover rent, 336.
- for rent against person in possession, 336.
- by joint tenants and tenants in common against co-tenants, 337.
- not to be commenced against executors, &c., except, &c., 371.
- pending against deceased persons, 371.
- executors, &c., may bring, 371.
- when may be brought against executors, &c., as for his own debt, 375.
- when may be prosecuted against executors, &c., as such, 371, 377.
- on probate bonds, 383, 384.
- limitation of time for commencing to recover lands sold by executors, &c., 344, 351.
- for divorce, 393.
- against sureties on bond by guardian, 402.
- against master for breach of indentures, 405.
- injunctions to stay proceedings in, 425 to 428.
- what may be brought in county courts, 433 to 437.
- cognizance of, by justices of the peace, 443.
- by and against corporations, in justices' courts, 448, 466.
- by and against towns to be in adjoining town, 466.
- where to be brought, 494.
- against person out of the state, 495.
- bail in, 498 to 500.
- against bail, 499.
- on bills of exchange and promissory notes, 503, 504.
- separate actions may be brought on bill or note. 503.
- *survival of, and of death, marriage, or other disability occurring after commencement of suit,* 508 to 510.
- death of either party not to abate suit, 508.
- to be suggested on the record, and executor &c., to prosecute or defend, 509.
- order for appearance, if executor, &c., does not appear, 509.
- judgment in case of default, 509.
- when suit brought by unmarried woman, on her marriage, husband may join, 509.
- actions which survive, 509.
- measure of damages in such cases, 509.
- where one of several plaintiffs or defendants dies, action to proceed, 509.
- how to proceed in case all plaintiffs or defendants die, 509.
- in real and mixed actions, if demandant die, his heirs, &c., may prosecute, 509.
- if one of several demandants die, how to proceed, 510.
- how to be prosecuted, if one of joint defendants die, 510.
- ib. in case either party becomes insane, 510.
- not to abate in case of death of public officer, &c., 510.
- not to abate by death of plaintiff in suits in name of one for benefit of another, 510.
- against defendants on joint contracts, when proof of joint liability not necessary, 528.

ACTIONS,
- by and against executors and administrators for tort, 551.
- ib. limitations of, 552.
- *against next of kin, heirs, legatees and devisees,* 554 to 558.
- against next of kin, how brought, 554.
- amount of recovery, 554.
- contribution may be compelled by next of kin, 454.
- by creditors against legatees, 554.
- what plaintiff must show, 554.
- amount recovered, how apportioned, 554.
- costs, how apportioned, 555.
- judgment what to express. &c., 555.
- payment by one defendant to discharge him, 555.
- heirs and devisees, to what extent liable, 555.
- creditors to show facts to charge, 555.
- order of preference in paymnnt by heirs, &c., 555, 556.
- when recovery not to be had against next of kin, 556.
- when judgment rendered for portion of debt, 556.
- prior debt paid to be credited, 556.
- when heirs to be prosecuted in equity, 556.
- infancy of defendants not to delay suit, 556.
- real estate descended to be specified, 556.
- what heir may show in defence, 556.
- value of lands, how ascertained, 556.
- when debt to be levied of real estate so descended, 556.
- decree to have preference as a lien, 557.
- when heir personally liable, 557.
- foregoing provisions relative to preference of debts to apply, 557.
- lands aliened, not affected by decree, 557.
- amount recovered against heirs, &c., how apportioned, 557.
- costs, how apportioned, 557.
- when decree may be executed against infants, 557.
- their names to be indorsed on execution, 557.
- when devisees not liable to creditors, 557.
- extent of their liability in certain cases, 558.
- limitation of last two sections, 558.
- what creditors to show in suits against devisees, 558.
- provisions in regard to heirs to apply to devisees, 558.
- devisees, how liable, though estate aliened, 558.
- for forfeitures, general issues may be plead-ed, and special matter given in evidence, 560.
- by and against corporations in courts of law, 593.
- against corporations in chancery, 594.
- *by persons holding claims on United States' lands* 610, 611.
- persons settled on lands may maintain actions for injuries to possession, 610.
- possession deemed to extend to boundaries of "claim," 610.
- extent of "claim," &c, 610.
- "claim" to be marked out, occupied, or improved, 610.
- what shall be deemed abandonment of "claim," 611.
- of replevin, 611 to 616. (See *Replevin.*)
- for the collection of penalties, forfeitures and fines, 622, 623.
- limitation of, 641 to 646. (See *Limitations.*)

- ACTIONS,
  - what barred by insolvent discharge, 650.
  - costs in, 654 to 660.
  - *relating to real property,*
  - for waste, 581.
  - for private nuisances, 583.
  - *general provisions concerning,* 584.
  - reversioners and remaindermen may be admitted to defend, 584.
  - may recover after default, &c. of tenant, 584.
  - wife may be admitted to defend without husband, on his default, &c., 584.
  - wife may have ejectment after default of husband, 584.
  - certain recoveries void as to reversioners, &c., 584.
  - feigned recoveries not to avoid execution, &c., 584, 585.
  - lessee for years may falsify for his term, 585.
  - rights of parties recovering, as to rents, waste, &c., 585.
  - joint and several actions by heirs, &c., 585.
  - actions not delayed on account of infancy of defendant, &c., 585.
  - imparlances, &c., abolished, 586.
  - landlords may defend actions against tenants, 586.
  - alienation by defendant after commencement of action, 586.
  - liability of purchaser during pendency of suit, 586.
  - execution for costs, or damages in actions relating to real property, 586.
  - practice in such actions, 586.
  - actions, &c., not retained, abolished, 586.
  - of ejectment, 562 to 569.
    (See *Ejectment.*)
  - of partition of lands, 570 to 581.
    (See *Partition.*)
- ACTS,
  - what to be contained in appendix to revised statutes, 741.
  - certain, when to take effect, 743, 744.
  - repeal of, 744 to 758.
  - ib. not to affect acts done or rights accrued, 757.
  - ib. as to offences committed and forfeitures incurred, 757.
  - heretofore repealed, so to continue, 757.
  - what not enumerated are repealed, 757, 758.
  - conflicting provisions in, how construed, 758.
  - establishing territorial government of Wisconsin and amendatory thereof, 778 to 788.
  - to enable the people of Wisconsin to form a constitution, &c., 789.
  - for the admission of Wisconsin into the Union, 792.
  - authentication of, how made, 800, 801.
  - granting lands to aid in improvement of Fox and Wisconsin rivers, 788.
- ADAMS COUNTY,
  - boundaries of, 51.
- ADJOURNMENT,
  - of legislature, 24.
  - of elections, 65.
    (See *Elections.*
  - of the supreme court, 410.
  - of circuit courts, 412.
  - of proceedings in same, 412.
  - of county courts, how made, 437.
  - before expiration of term, not to affect writs, 438.
  - when courts of record may be adjourned to another place, 439, 440.
- ADJOURNMENT,
  - of court before expiration of term not to affect return of writ, 438.
  - of causes in justices' courts, 451.
  - of examination on criminal charge, 721.
- ADJUTANT GENERAL,
  - entitled to copy of laws, 61.
- ADMEASUREMENT OF DOWER, 334, 335.
  (See *Dower.*)
- ADMINISTERING POISON,
  - to cattle, &c., 694.
    (See *Poison.*)
- ADMINISTRATION,
  - in case of minority of executor, 361.
  - of the estates of intestates, 362 to 366.
  - who entitled to letters of, 363.
  - with the will annexed, when to be granted, 364, 365.
  - to be revoked on proving will, 365.
- ADMINISTRATION OF OATHS,
  - before whom may be taken, 529.
  - when persons may affirm, 529.
  - court may adopt other than usual mode of swearing, 529.
  - may examine infants, &c., to ascertain their capacity, &c., 529.
  - may be taken in any of usual forms, and force of same, 530.
    (See *Oaths.*)
- ADMINISTRATOR,
  - with the will annexed, to give bond, &c., 361.
  - to have same authority, &c., as executor would have had, 361, 362.
  - who entitled to be, 363.
  - his bond, 364,
  - special, when may be appointed, his duties, &c., 364.
  - when to be removed, 365.
  - remaining, when to execute trust, 365.
  - of goods unadministered, 365.
  - notice of application for appointment of, 365.
    (See *Executors and Administrators.*)
- ADMISSION,
  - of new states into the Union, 13.
  - of attorneys, 441.
  - of Wisconsin into the Union, an act for, 792.
- ADULTERATING,
  - food, liquors, &c., 711.
- ADULTERY,
  - divorce decreed for, 394.
  - when not, 395.
  - how punished, 707.
- ADVANCEMENT,
  - estate or interest given by virtue of a beneficial power, to be, 325.
  - to child, how to be considered, 339.
  - how estimated, 340.
  - when gifts, &c., to be deemed, 340.
  - when to be taken into consideration in the division of the estate, 340.
- ADVERSE POSSESSION,
  - not to render void conveyance of lands, 327.
  - what shall be deemed, 642.
- ADVERTISEMENT,
  - of sale of real estate on execution, 543.
  - foreclosure of mortgages by, 619.
  - fees for publishing, 676.
- AFFIDAVITS,
  - certain, and copies thereof to be evidence, 524.
    (See *Depositions, Oaths.*)
- AFFIRMATION,
  - definition of, 59.
  - when person may affirm, 454, 529.
    (See *Administration of Oaths.*)

AFFRAY,
what officers to suppress, 105.
(See *Unlawful Assemblies.*)
AGE,
of minor, to be inserted in indentures, 404.
AGENTS,
when may do acts required to be done by principal, 60.
may sign bills of exchange and promissory notes, 262.
to take charge of estates of non-residents on partition, 383.
may subscribe, certain instruments, 388, 389.
party may appear by, in justice's court, 448.
certain notices may be given by or to, 516, 528.
embezzlement by, 691.
AGREEMENT,
powers of courts of equity, to compel specific performance of, 388.
what void, unless in writing, 388, 389.
(See *Contracts.*)
AID,
may be required by sheriffs, constables, &c., 105.
punishment for refusing to officers, 702.
in suppressing unlawful assemblies, 704.
AIDING AND ABETTING,
in the commission of crimes, 711, 712.
ALIENATION,
suspending powers of, on future estates, 314.
how long may be suspended, 314, 315.
computation of time of suspension, 325.
of real property, 326.
by defendant, of lands, not to bar or delay action, 586.
ALIENS,
to possess and enjoy property same as citizens, 20.
being women, not barred of dower, 335.
may hold, convey and devise lands, 337.
statute of limitations not to run against in time of war, 645.
an act relative to the naturalization of, 794, to 798.
ALIMONY,
when may be allowed wife, 397.
ALLOWANCE,
for maintenance of widows and minor children, 357.
AMENDMENTS,
to constitution of United States, 16.
ib., of Wisconsin, 36.
in chancery, how made, 416.
amendments and proceedings thereupon, 530 to 532.
when court may amend process, pleadings, &c., 530.
opportunity to be allowed to answer amended pleading, 530.
process not to be amended as to return day, 530.
defects in form, may be amended after judgment, 530.
ib., of officers returns, &c. at any time, 530.
ib., of award of venire, 530.
certain imperfections not to affect cause after verdict, or judgment on confession, 530.
certain omissions, &c., may be supplied by the court, 531.
process, &c., not to be amended without order of court, 531.
to what actions provisions for amendments extend, 531.
AMENDMENTS,
court may allow amendments whenever a change shall happen in a suit, 532.
ib., if non joinder of defendant is pleaded, 532.
new process to issue, 532.
on return of same, defendants bound to appear, 532.
if service can be made, how action still to continue, 532.
judgment, how to be rendered, and execution issued, 532.
plaintiff may amend when part of defendants defaulted or confess, 532.
when and on what terms plaintiff may discontinue as to part of defendants; to amend declaration, &c., 532.
such defendants may be witnesses, 532.
circumstantial mistakes, and errors of form, not to vitiate, 532.
in suits in partition, 572.
in suits for forcible entry, &c., 609.
ANIMALS,
towns may make by-laws respecting their going at large, 119.
malicious injury to, 694.
cruelty to, 710.
ANNUAL REPORTS,
of secretary of state, 82.
of same as auditor, 83.
of state treasurer, 86.
of state superintendent, 89.
duty of all officers respecting who are required to make, 90.
of county supervisors to be published, 98.
of town board, 128.
of the regents of the university, 187.
of treasurer of school district, 192.
of clerks of school districts, 193.
of town superintendents, 196.
of clerks of supervisors to state superintendent, 202.
of commissioners of school lands, 219, 223.
of town supervisors, of expenditures for support of poor, 240.
of trustees of cemetery associations, 271.
of directors of plank and turnpike road companies, 283.
(See *Reports.*)
ANSWER,
in chancery, when not to be evidence, 414.
when to be filed, 415.
proceedings on in chancery, 416, 417.
before whom may be sworn to, 416.
of defendant, in case of fraud, 418, 419.
not to be evidence on criminal charge, 419, 597.
of officers, &c., of corporations, how far evidence and how compelled, 597.
APPAREL,
wearing, allowed to widow, 362.
exempt from execution, 541.
APOTHECARY,
selling arsenic &c., without labeling, 711.
APPEALS,
from decision of county board, how taken and tried, 97.
from decisions in laying out or altering roads, 178, 179, 180.
to superintendent of public instruction, 89, 199.
from justices, in proceedings relative to support of poor, 240, 241.
from appraisal of damages for lands taken by road companies, 278.
from location of toll gates, 280, 281.
from order to throw open same, 284.

APPEALS,
from decisions of commissioners on estate of deceased persons, 372, 373.
from decree of probate court relative to partition, &c., 382.
ib., relative to the conveyance of lands by executors, &c., 385.
in chancery, to the supreme court, when and how made, 428.
supreme court may award damages on, 428.
from justice to county court, 433, 437, 475.
ib., to circuit court in criminal cases, 486.
from judges of probate to circuit court, 431.
how made and proceedings thereon, 431, 432.
when allowed from county courts, 436.
from justices' courts to county courts, 433, 437.
in cases of forcible entry, &c., 608.
costs on, 657, 658.
in criminal cases, 728, 729.
from justices to circuit courts, 728.
duty of justice, 728.
apellant need not advance fees, 728.
proceedings if not prosecuted, 728.
forfeiture accruing, court to award it out of penalty, 728.
from appraisal of lands, &c., taken for improvement of Fox and Wisconsin rivers, 769.
APPEARANCE,
of corporations in justices' courts, 448.
of defendant on service of declaration, how entered, 494.
rule for, in proceedings by information, 638.
APPELLATE COURTS,
when judges of, not to take part in decision of cause, 440.
APPENDIX, 759 to 801.
what to contain, 741, 742.
APPOINTMENT,
when governor may make, 116, 117.
when town board of supervisors may make, 124, 125.
of next friend for infants, 497.
of guardian for infants, 497.
APPORTIONMENT,
of representatives in congress, 5.
of senators and members of assembly, 23, 40.
of school moneys, 196, 197, 205, 206.
APPRAISEMENT,
of school and university lands, 217.
of improvements thereon, 217, 218.
of lands offered in security for loan of school moneys, 220, 221.
of school lands, to proceed under former act, 225.
expenses of, how paid, 225.
of strays and lost money and goods, 250, 251.
of damages for lands taken for plank and turnpike roads, 276 to 278.
of estates of deceased persons, 366.
of estate of wards, 401, 402.
warrant for, &c., may be revoked, 431.
fees on, 673.
of school and university lands, 762, to 765.
(See *School and University Lands.*)
APPRENTICES,
how to gain legal settlement, 236.
when poor minors may be bound as, 238.
how may be bound to serve, 404 to 407.
(See *Masters and Apprentices.*)
ARITHMETIC,
apprentices to be instructed in, 404.
ARMS,
right of people to keep, 16.
ARREST,
members of congress, when privileged from, 7.
ARREST,
members and officers of legislature, when privileged from, 24, 79.
of members of legislature, to be deemed a contempt, 79.
when sheriff, &c., not liable to on civil process, 106.
of principal, by surety in bail bond, 500.
and examination, &c., of offenders, 719.
(See *Prisoner.*)
of fugitives from justice, 799.
ARSON, 688, 689.
(See *Burning.*)
ASSAULT AND BATTERY,
not indictable, 487.
to be tried before justice, 487.
in action for, when no more costs than damages recoverable, 655.
ASSAULTS,
with intent to murder, 686.
with dangerous weapon and robbing, &c., 686.
with intent to rob, 686.
with intent to commit rape, 687.
with intent to commit burglary, 688.
with intent to commit any felony, 688.
ASSEMBLAGE UNLAWFUL, 703, 704.
(See *Unlawful Assemblies.*)
ASSEMBLY,
number of members of, 23.
members of, when and how chosen, 23.
apportionment of members of, 40.
(See *Legislature.*)
ASSEMBLY DISTRICTS,
how to be bounded, 23.
state divided into, 40.
ASSENT,
to act of congress granting lands to aid in the improvement of Fox and Wisconsin rivers, 765.
ASSESSMENT,
of taxes, 139, 140.
equalization of, 146.
of highway taxes, 170, 171.
of damages for laying out roads, 176, 177.
of school district taxes, 199 to 201.
of damages for opening and widening streets, &c., 298, 299.
how same collected, 299.
assessment of damages, 533, 534.
when clerk may assess, 533.
obligations or contracts on which may be made, 533.
on notes, &c., when copy filed, 533.
production of note, &c., sufficient evidence, 533.
to be made, though there are general counts, 533.
clerk may administer oaths, &c., 533.
may take proof of lost instrument, 533.
to report amount due, and certify same on bill, 534.
proceedings upon report, 534.
judgment how entered, 534.
in suits by attachment, 591.
on default in certain cases, 637.
ASSESSMENT ROLL,
blank, to be furnished by county supervisors, 98.
when and how to be made out, 140 to 144.
form of, 142, 143.
may be altered until certified, 145.
certificate attached thereto, 145.
when to be delivered to chairman of supervisors, 145.
when to town clerk, 146.
when board of supervisors may make out, out, 145.

ASSESSMENT ROLL,
when to be delivered to town treasurer, 148.
warrant annexed thereto, 148.
when to be evidence, 155, 165.
unpaid school taxes to be entered upon, 201.
in villages, when and how to be made and completed, 299, 300.
ASSESSORS,
when and how chosen, 119.
to take oath of office, 123.
compensation, 131.
duties of, in assessment of taxes, 140 to 144.
when may administer oath, 144, 145.
may reduce valuation of property by affidavit, 144.
to use forms, &c., transmitted by secretary, 146.
to be elected in villages, 293.
their duties and compensation, 299.
ASSETS,
when proceeds of real estate to be, 346.
when interest in mortgaged premises to be, 368.
distribution of, among creditors, 374.
what goods and money not considered, 553, 554.
ASSIGNEES,
of certificates issued on sale of school lands, 214.
when may compel execution of trust power, 323.
of mortgage, liability of, for neglect to discharge, 331.
of insolvent debtors, 650.
ASSIGNMENT,
general, beneficial powers, &c., to pass by, 323.
of mortgage, recording of, not notice to mortgagor, 329.
of dower, 334.
of trust in lands to be in writing, 390.
to delay or defraud creditors, void, 390.
in proceedings, for relief of insolvent debtors, 650.
ASSUMPSIT,
may be brought to recover rent due by deed, &c., 336.
declaration in, for recovery of penalties, &c., 622.
limitation of action, 643.
ATTACHMENT,
court commissioner may allow writ of, 104.
creditors may proceed by in county courts, 436.
against witnesses in justices' courts, 453.
proceedings by, in justices' courts, 456 to 459.
to bring up witnesses, 516.
against foreign corporations, 593.
when may be issued by court to punish for misconduct, 599 to 601.
against sheriff for refusing to return habeas corpus, 628.
of proceedings against debtors by, 587 to 592.
in what cases creditor may proceed by, 587.
contents of affidavit to be annexed to writ, 587, 588.
not to issue unless one hundred dollars due, 588.
contents of, 588.
how executed, 588.
appraisement of property, 588.
not necessary to enter upon land, 588.
to bind goods and chattels, 588.
ATTACHMENT,
when real estate bound by, 588.
duty of register of deeds on filing copy of, 588.
fees of register and appraiser, 589.
property to remain in hands of officer unless bond be given, 589.
contents of bond, 589.
release of property on delivery of bond, 589.
when and how bond may be sued, 589.
proceedings on return of writ personally served, 589.
ib., not personally served, 589.
bond to be returned and filed by officer, 590.
when plaintiff may file declaration, &c., 590.
when defendant not served, may appear and defend, 590.
judgment and execution, 590.
indorsement on execution, 590.
when not necessary to issue, to entitle plaintiff to sue bond, 590.
perishable property may be ordered to be sold, 591.
officer to make sale and deposite proceeds, 591.
to whom same to be paid, 591.
assessment of damages on judgment against plaintiff, 591.
practice in attachment suits, 591.
against property of joint debtors, 591.
effect of sale in case of incumbrance removed before sale, 591.
officer to garnishee person having property of or indebted to defendant, 591,
liability of garnishee to appear and answer, 591.
how he may be compelled to appear and answer, 592.
when to recover judgment against plaintiff for his fees, 592.
issue between plaintiff and garnishee, 592.
judgment against garnishee, 592.
officer may require security to indemnify him, 592.
costs in proceedings by, in certain cases, 658.
ATTAINDER,
no bill of, to be passed, 9, 20.
of treason, not to work corruption of blood, 12, 20.
ATTEMPTS,
to procure abortion, 683, 684.
to murder, 686.
to rob, 686.
to extort money by threats, &c., 687.
to commit rape, 687.
to aid escape from prison, 701.
ATTORNEY,
suitors may prosecute and defend by, or in person, 31.
who not to practice as, 107.
when judge of probate not to act as, 430.
when liable for costs, 501, 659.
how may relieve himself, 502, 659.
when not privileged from arrest during sitting of court, 441.
who entitled to license to practice as, 441.
when parties may appear by, 441.
warrant of, need not be filed, 441.
name of, to be inserted in declaration and plea, 441.
when judge or justice not to appear as, 441,
certain notices may be given by or to, 516, 528.
when not to be allowed fees as witness 678.

- ATTORNEY,
  - *letters of,* to convey lands, provisions concerning, 330.
  - *power of,* to convey lands, not affected by chap. 58 on powers, 326.
- ATTORNEYS, DISTRICT,
  - when and how chosen, and term of office, 28, 102.
  - entitled to copy of laws, 61.
  - to take oath and file bond, 102.
  - their duties, 102.
  - when to appear for state or county before magistrates, 102.
  - to give opinions to board of supervisors and county officers, 102.
  - their salary, 102.
  - not to receive fee or act as attorney in certain cases, 102, 103.
  - not to hold judicial office, 103.
  - when may be appointed by court, 103.
  - to give duplicate receipts for moneys received, 103.
  - when to file account of, and pay over same, 103.
  - penalty for neglect, 103.
  - to attend grand jury, issue process, &c., 103.
  - their duty when election laws violated, 133.
  - to prosecute for penalties incurred under law prohibiting unauthorized banking, 256.
  - when to attend grand jury, 514.
  - when to prosecute bond taken on arrest for contempt, &c., 602
  - his duty in relation to prosecuting for penalties and forfeitures, 623.
  - not to be paid mileage out of county treasury, 678.
- ATTORNEY GENERAL,
  - when and how elected, and term of office, 27, 76.
  - entitled to copy of laws, 61.
  - his duties as one of board of state canvassers, 73, 74, 75.
  - his general duties, 87.
  - to make report, when requested, to legislature, 87.
  - to pay public moneys received by him into state treasury, 87.
  - to keep a register, 87.
  - to take oath and give bond, 88.
  - his salary, 88.
  - to be one of commissioners for sale of school lands, &c., 35, 210.
  - his powers and duties relative to corporations, 310.
  - when injunctions may be issued against corporations, on application of, 594, 595.
  - when to prosecute bond taken on arrest for contempt, &c., 602.
  - service of subpœna, &c., on, 580.
  - his duties on informations in the nature of a quo warranto, 636 to 640.
  - may issue subpœnas in behalf of the state, 678.
- AUCTION,
  - school and university lands to be offered at, 211, 214.
  - ib. of lands for improvement of Fox and Wisconsin rivers, 771
- AUCTIONEER,
  - memorandum made by, effect of, 389.
- AUDITOR,
  - secretary of state to be, 27.
  - powers and duties of, 83, 84.
  - (See *Secretary of State.*)
- AUDITORS,
  - town, who to be, and their powers and duties, 127, 128.
  - to present annual report of commissioners of highways to town meeting, 168.
- AUTHENTICATION,
  - of records and judicial proceedings in other states, 522.
  - of acts, records and judicial proceedings in each state, 800, 801.
- AUTHORITY,
  - conferred on three or more, when may be exercised by majority, 59.
- AVERMENTS,
  - in pleading that parties are partners, effect of, 528.
- AWARDS,
  - made on appraisal of lands, &c., taken for improvement of Fox and Wisconsin rivers, 769.
- BAIL,
  - excessive, shall not be required, 17, 19.
  - all persons bailable before conviction, except for capital offences, 20, 721, 722.
  - *in civil actions, and proceedings connected therewith,* 498.
  - proceedings to hold to bail in actions for tort, 498.
  - true cause of action to be expressed in capias, 498.
  - writ to hold to bail, how executed, 498.
  - when sheriff to accept bond, 498.
  - bond to be to officer, and condition of, 498.
  - when to satisfy judgment, 499.
  - action against, 499.
  - within what time to be commenced, 499.
  - plea and defence allowed, 499.
  - when may surrender principal, 500.
  - may arrest principal on bail piece, 500.
  - to notify plaintiff, 500.
  - of person surrendered by first surety, 500.
  - imprisonment for want of; sheriff's return, 500.
  - in criminal cases, 721 to 723.
  - (See *Prisoners.*)
- BAIL BOND,
  - when sheriff to accept, 498.
  - when liable for insufficiency of, 498.
  - effect of, 498.
  - to be to officer, and condition of, 498.
  - officer not obliged to receive unless, &c., 499.
  - when officer liable for loss, 499.
  - to be returned and filed, 499.
  - how far to be considered as a recognizance, 499.
  - scire facias on same, 499, 500.
  - from what court, and when scire facias to issue, 499.
- BAIL PIECE,
  - officer to give to sureties, 499.
  - form of, 499.
- BAILING PRISONERS, 721, 722.
  - (See *Prisoners.*)
- BAILOR,
  - interest of, in goods pledged, may be sold on execution, 540.
- BALLOTS,
  - electors shall vote by, 68.
  - to contain the names of all persons voted for at any election, 68, 122.
  - when received, how to be deposited, 69.
  - to be counted and compared with poll lists, 69, 70.
  - excess of, to be destroyed, 70.
  - ballots rejected as defective, to be preserved, 70.
  - all others to be destroyed, 70.
  - town officers to be elected by, 122.

BALLOTS,
at town meetings, how to be compared, 122.
penalty for forcibly adding to, or diminishing number of, 133.
BALLOT BOXES,
by whom to be provided and kept, 68.
how to be kept during election, 69.
penalty for withholding or destroying the same, 133.
BANKS,
how may be incorporated, 35.
how vote on to be submitted to people, 35.
BANK BILLS, not to be issued unless authorized by law, 256.
for less than one dollar, not to be circulated, 256.
may be levied on execution and sold, 539.
forgery of, 697.
(See *Forgery and Counterfeiting.*)
BANKING UNAUTHORIZED, 255.
(See *Unauthorized Banking.*)
BANKING ASSOCIATIONS,
how may be incorporated, 35.
BANKRUPTCIES,
congress to establish uniform laws on subject of, 8.
BASTARD,
when justice may issue warrant against person accused of being father of, 244.
proceedings on return of warrant, 244, 245.
when accused to give recognizance or be committed, 245.
when and how cause to be continued, 245.
mother to be a witness, and examination to be evidence, 245.
when and how father chargeable with maintenance of child, 245.
to give bonds or be committed, 245.
when and how may be discharged from imprisonment, 246.
when mother or supervisors may prosecute on order of court, 246.
when supervisors may prosecute suit instituted by mother of bastard, 246.
when same may apply to justice to inquire into case of bastardy, 246.
may compromise with putative father, 246.
punishment for concealing death of, 708.
BAWDY HOUSES,
punishment for keeping, 708.
lease of, when void, 708.
BEASTS,
may be restrained from going at large, 119.
malicious injury to, how punished, 694.
BETTING AND GAMING,
betting on election, to disqualify as an elector, 23, 63.
at gaming table, punishment for, 707.
permitting gambling table to be used, 707.
who not incapacitated from testifying, 707.
officer may break door, &c., 707.
duty of judge, 707.
ib. of sheriff, 707.
BENEFIT OF CLERGY,
plea of, abolished, 713.
BEQUESTS.
of personal estate, who may make, 353.
BIBLE,
master to give apprentice, 404, 405.
to be furnished prisoners, 736.
BIGAMY,
how punished, 707.
BILL IN CHANCERY,
for specific performance under contracts to convey lands, 386.
for divorce, 394, 395.
applications to chancery to be by, 413.
BILL IN CHANCERY,
when bill of discovery may be filed, 414.
if prolix, solicitor to pay costs, 414.
when to be filed before subpœna issued, 414.
proceedings on cross bill, 416.
when to be dismissed, 417.
for foreclosure of mortgages, 423 to 425.
against corporations, and the stockholders, &c, thereof, 595, 596.
if dismissed, when defendant to recover costs, 654.
BILLS OF EXCEPTIONS,
how taken and signed, 560.
in county courts, 436, 437.
BILLS OF PARTICULARS,
in justices' courts, 449.
BILLS OF EXCHANGE AND PROMISSORY NOTES.
how drawn and effect of, 262.
may be signed by agent, 262.
by whom actions may be maintained on, 263.
effect of, if payable to order of maker or fictitious person, 263.
when days of grace allowed on and when not, 263.
acceptance to be in writing, 263.
damages allowed on bills of exchange, 263.
proceedings on, 503, 504.
plaintiff may declare on money counts alone, 503.
how judgment may be rendered in suits on, 503.
all or any of the parties to a bill or note may be sued jointly, 503.
separate actions may be brought on, 503.
joint drawer, indorser, &c., may plead nonjoinder in abatement, 504.
judgment, how rendered, where all parties are not served with process, 504.
when may not be entered against all parties; when action severed, 504.
plaintiff entitled to testimony of defendant, 504.
defendant entitled to testimony of co-defendant, 504.
when one defendant may move for judgment as in case of non-suit, 504.
how party may recover on, when lost, 526.
possession of, to be evidence of indorsement, 528.
costs, when several suits brought on, 655.
forgery of, 697.
BILLS,
in congress, how passed, 7.
ib. in legislature, 24, 25, 27.
BLANKS,
what to be distributed by secretary of state, 165.
ib., by superintendent of public instruction, 89.
judges of probate to furnish, 432.
judges of county courts to furnish, 436.
BOARD OF PUBLIC WORKS,
their powers and duties, 765 to 773.
(See *Improvement of Fox and Wisconsin rivers.*)
BOARD OF SUPERVISORS,
county, 95.
town, 119, 126, 127.
(See *County Supervisors, and Town Supervisors.*)
BOARD OF HEALTH,
who to constitute, 229.
their powers and duties, 229, 230.
BOATS AND VESSELS,
proceedings for the collection of demands against, 603 to 605.

BOATS AND VESSELS,
- for what debts liable, 603.
- debts, &c., may be collected of boat, 603.
- suit how instituted against, 603.
- warrant to be issued, 603.
- proceedings how conducted, 604.
- who may defend, 604.
- how discharged from detention, 604.
- may be sold, 604.
- execution for plaintiff, how issued, 604.
- justices to have cognizance, 604.
- proceedings before justices, 604.
- warrant issued by justices, how returned, 604.
- part of boat may be sold, 604.
- continuance, how granted, 605.
- ib., not to be granted to plaintiff, 605.
- fees of officers, 605.
- time allowed for bringing action, 605.
- when county court may have jurisdiction, 605.

BODY, DEAD,
- punishment for violating sepulchre, 709.
- inquests on, 731.
- (See *Inquests of the Dead.*)

BONDS, OFFICIAL,
- executed under territorial government to remain valid, 38.
- neglect to give or renew, to vacate office, 115.
- judgment for breach of, to vacate office, 115.

BONDS,
- to vend spirituous liquors, 242.
- of father of bastard child, 244, 245.
- concerning interest in lands may be recorded, 331.
- of executor, &c., given before sale of real estate, 345.
- given for debts of deceased person, effect of, 346.
- of indemnity given on sale of contract for land, 348.
- of guardian, given before sale of real estate, 350.
- by executors, 360, 361.
- by administrators, 364, 365.
- by special administrators, 364.
- of executors, &c, may be prosecuted for neglect to render account, 379.
- taken by probate court, prosecution of, 383, 384.
- to be given by guardians, 399.
- on granting of injunctions, 425 to 428.
- to be filed before injunction issued, 427.
- to whom to be delivered for prosecution in certain cases, 427, 428.
- when not deemed sufficient unless approved by judge of probate, 431.
- of indemnity, to officer making levy, 538.
- judgment on, to be for penal sum, 561.
- how execution awarded on same, 561.
- further execution on same, 561.
- when court or judge shall direct the penalty of, 600.

BOOKS.
- for use of county officers to be furnished by county board, 98.
- county to furnish for judges of probate, 432.
- ib., for county courts, 436.
- *and papers*, compelling delivery of by public officers, 624.
- public officers to deliver to successors, 624.
- complaint by successors, 624.
- proceeeedings on complaint, 624.
- when party to be committed, 624.
- search warrant for, and proceedings thereon, 624.

BOOKS,
- proceedings to obtain, in case of death, &c., of officers, 625.

BOOKS OF ACCOUNT,
- when and how may be introduced as evidence, 526, 527.

BOUNDARIES,
- of state, 21, 50.
- of counties, 50, 58.

BOUNTIES,
- for the destruction of wolves, who to grant, 96.

BRANDS, 254.
- (See *Marks and Brands.*)

BREAKING,
- into dwelling house, &c., 689, 690.
- (See *Burglary.*)

BRIBERY,
- persons guilty of, excluded from right of suffrage, 23, 63, 132.
- offering bribe to member of legislature to be deemed a contempt, 79.
- of elector, punishment for, 132.
- giving or offering bribes to officers, 701.
- accepting by officers, 701.
- corrupting jurors, 701.
- accepting bribes by jurors, 701.

BRIDGES,
- electors may vote to raise moneys to build and repair, 118.
- when county supervisors may raise money for same purpose, 182, 183.
- amount they may raise, 183.
- notices of precaution may be posted on, 183.
- fine for riding or driving faster than a walk on, 183.
- penalty for injury to, 183, 184.
- persons sustaining damage from insufficiency of, may recover, 183.
- punishment for malicious injury to, 695.

BROTHERS AND SISTERS,
- of intestate, and their descendants, when and in what shares to inherit, 338.

BROWN COUNTY,
- boundaries of, 51.
- appraisal of school lands in, 225.

BUILDINGS,
- road not to be laid through, 175.
- maliciously injuring, 705.
- ib., burning, 688, 689.
- (See *Burning.*)

BURGLARY,
- being armed, or making assault, 689.
- not being armed, or assaulting, 689.
- breaking into office, &c., at night, 689.
- entering house, &c., at night without breaking, 690.

BURNING,
- dwelling house in night by which life is destroyed, 688.
- ib., by which life is not destroyed, 688.
- house in day-time, 688.
- church, court house, &c., by night, 688.
- ib., in day time, 688.
- other buildings, day or night, 689.
- boards, timber, &c., 689.
- by married woman of property of husband, liable for, 689.
- property, to injure insurers, 689.
- ship or other vessel, 693.

BURYING GROUNDS,
- exempt from taxation, 139, 271.
- belonging to cemetery associations, regulations concerning, 269 to 272.
- fine for mutilating tombs, monuments, &c., 710.
- punishment for making roads through, 710.
- (See *Cemetery Associations.*)

BUSHEL, STANDARD, 261.
BUYING,
  stolen goods, 690.
  jurisdiction of justice, 691.
BY-LAWS,
  electors at town meetings may make, 118, 119.
  may annex penalties thereto, 119.
  not to take effect until published, 119.
  their force and effect, 119.
  copies of, to be posted and entry thereof to be made, 127.
  regents of the university may make, 187.
  uniform companies may make, 227.
  medical societies may make, 231, 233.
  cemetery associations may make, 270.
  same of trustees of manufacturing corporations, &c., 287.
  same of board of trustees of incorporated villages, 296.
  same of incorporations generally, 307.
CALENDAR,
  of prisoners, 736, 737, 739.
CALUMET COUNTY,
  boundaries of, 51.
CANAL,
  lands, how to be disposed of, 44, 45, 792, 793.
  malicious injury to, 694.
  connecting Fox and Wisconsin rivers by, 765.
  construction of, to be first commenced, 766.
CANVASS OF VOTES,
  by town board of inspectors, how to be conducted, 69, 70.
  county canvass when, and by whom held, and how to be conducted, 70, 71, 72.
  certified statements of result to be made out and transmitted, 71, 72.
  district canvass, when and by whom held, and how to be conducted, 72, 73.
  same of state canvass, 73, 74, 75.
  board of state canvassers may adjourn, 74.
  at town meetings, how conducted, 122, 123.
CAPIAS,
  writ of, how served, 495.
  when and how issued, 495.
  fictitious name in, when may be used, 495.
  return of sheriff, 496.
  true cause of action to be expressed in, 498.
  writ, how executed, 498.
CARRIAGES,
  public, regulation of, 247, 248.
  not to be driven by person addicted to drunkenness, 248.
  driver of, when to be discharged on complaint of passenger, 248.
  horses attached to, not to be left without fastening, 248.
  owners of, liable for all damages occasioned by driver, 248.
CASE,
  limitation of action on the, 643.
  report of, to supreme court, 728.
  when accused to recognize on report of case, 728.
CASTING AWAY SHIP OR VESSEL,
  punishment for, 693.
  lading or fitting out with intent to destroy, 694.
CATTLE,
  may be restrained from going at large, 119.
  malicious injury to, how punished, 694.
CEMETERY ASSOCIATIONS,
  how organized and trustees elected, 269.
  trustees to be classified, 269.
  certificate to be made and recorded, 269.
  to have the powers of a corporation, 270.
  may make by-laws, 270.
CEMETERY ASSOCIATIONS,
  powers of trustees, 270.
  may hold real and personal estate, 270.
  lots, when and how sold, 270.
  maps of cemeteries, to be made and filed, 270.
  election of trustees, and their term of office, 270.
  who may be trustees, and same may fill vacancies, 271.
  when special election may be held, 271.
  trustees to make annual report, 271.
  how proceeds of sales of lots to be applied, 271.
  wilful trespass in cemetery, a misdemeanor, 271.
  suit may be brought in name of association, 271.
  when in name of individual proprietor, 271.
  lands and property belonging to, exempt from taxation and execution, 271.
  no street or road to be laid through cemetery, 271.
  when lots therein to be inalienable, 271, 272.
  regulations concerning burial, 272.
  fine for mutilating tombs, monuments, &c., 710.
CENSUS,
  of *United States*, 5.
  of *this state*, 23.
CERTIFICATE,
  of state debt, when only, may be issued, 33.
  of election, to be made out and delivered by clerk of supervisors, 71.
  ib. by secretary of state, 74.
  when to be granted, though election informal, 77.
  required to be filed in office of clerk of circuit court, when to be filed in office of clerk of supervisors, 130, 131.
  of lands sold for taxes, how made, 159.
  same assignable, and effect of, 159, 160.
  though lost, deed may be issued, 161.
  redemption money may be drawn, 161.
  of redemption of land, to be countersigned by county treasurer, 161.
  to include as many parcels of land as person redeeming may desire, 166.
  of excess of labor on highways, 169.
  to school teachers, who to grant, 198.
  may be annulled, 198.
  of sale of school lands, when forfeited, 213.
  force and effect of, 213.
  may be assigned and recorded, 214.
  if lost, certified copy may be issued, 214.
  when and how to be issued, 215, 216.
  of appraisal of lands offered in security for school moneys, 221.
  of organization of religious societies, 266.
  same of cemetery associations, 269.
  same of library and lyceum associations, 272.
  same of corporations for manufacturing, &c., 286.
  of lands sold for village taxes, by whom executed, and what to contain, 301.
  of acknowledgment of deeds, 329.
  of marriage, to be given, and what to contain, 392.
  to be filed and recorded, 392.
  to be evidence, 393.
  of conviction in justices' courts, 487.
  form of same, 489.
  of sheriff, of service of declaration, effect of, 494.
  of attendance of jurors, to be allowed by supervisors, 515.

CERTIFICATE,
form of, to be annexed to deposition, 517.
of officer, when to be evidence of loss of instrument, 525.
of clerk, when necessary to be attached to justice's docket, 527.
registers' and receivers', to be evidence, 528, 529.
of sale on execution to be made, and contents, 544.
to whom to be delivered, 544.
when to be evidence, 544.
when void, 545.
of travel and attendance as witnesses, 678, 679.
CERTIFIED COPIES,
of papers, records, &c., when to be evidence, 524.
CERTIORARI,
to justices' courts, 433, 474.
CHALLENGE,
to fight a duel, punishment for, 685.
carrying or accepting same, 685.
posting another for not sending or accepting, 686.
CHALLENGE OF VOTERS,
who may challenge at elections, 68, 122.
proceedings upon challenge, 68, 122.
if person challenged refuse to take oath, his vote to be rejected, 68.
duty of inspectors to challenge, 69.
at town meetings, 122.
Of Jurors,
peremptory in civil cases, 515.
by prosecuting officer in capital cases, 515.
by either party in criminal cases, 515, 726.
(See *Trials.*)
CHANCELLOR OF THE UNIVERSITY,
how elected, 187.
to be president of board of regents, 187.
CHANCERY, COURT OF,
how testimony taken in, 31.
when trusts to vest in, 320.
their powers in relation to trusts and trustees, 320.
when to execute powers, 323.
may compel the conveyance of real estate under contract, 386.
powers of, to compel specific performance of agreements, 388.
circuit court to have jurisdiction of cases in chancery, 413.
proceedings in, how regulated, 413.
when suits to be dismissed, 413.
terms in, to be the same as common law terms, 413.
court may appoint special terms, 413.
application to, to be by bill, 413.
complainant may insert as many defendants as he thinks proper, 413.
when he shall pay costs, 413.
bill to compel discovery of property, when filed, 414.
set-offs, how allowed, 414.
when solicitor or counsel to pay costs, 414.
when bill of discovery may be filed, 414.
answer on such bill, when not to be evidence, 414.
power of court to take proof of and establish lost will, 414.
subpœna, &c., not to issue until bill filed, 414.
process, to whom directed, 414.
when suit to be instituted, 414.
power of court to enforce their decrees by process, 415.
process how tested and returnable, 415.
duty of sheriff in executing same, 415.
CHANCERY, COURT OF,
subpœna, how served, 415.
when complainant may enter rule to plead, 415.
when defendant to plead, &c., 415.
time to answer may be enlarged, 415.
proceedings, if defendant neglect to file his plea, &c., 415.
ib., against absent defendants, &c., 415, 416.
when complainant may reply, 416.
demurer to be disposed of before answer, 416.
proceedings when plea or demurrer overruled, 416.
who to pay costs in such cases, 416.
exceptions to answer to be referred, 416.
who to pay costs in such case, 416.
pleadings when cross bill filed, 416.
before whom defendant may swear to answer, 416.
rules may be entered at any time by consent of parties, 416.
amendments, how made, 416.
when cause deemed at issue, 417.
complainant to answer interrogatories on oath, 417.
issue of facts to be tried by jury, 417.
when bill to be dismissed, 417.
proceedings when defendant does not attend hearing, 417.
person having possession of land may institute suit against claimant, 417.
proceedings by person owning land on meandered river, 417.
when complainant to give bond in case of decree against absent defendant, 417.
when and how absent defendant may be heard after decree against him, 418.
effects of final decree, 418.
decree need not be enrolled, 418.
papers to be filed and copy of decree signed by court, annexed, 418.
title to land may be passed by decree, 418.
when receiver may be appointed, 418.
defendant shall answer bill charging him with fraud, 418, 419.
such answer not evidence on criminal charge, 419.
supreme court may make rules as to certain proceedings in, 419.
court may make or alter rules of practice, 419.
when order of reference may be made, 419.
decrees and orders how enforced, 419.
proceedings in relation to the conveyance of lands by infants and the sale of their estates, 419 to 421.
court may compel specific performance of contracts, 419, 420.
may order letting or sale of infant's property, 420.
infant to be ward of court, 420, 421.
power of court when estate of infant subject to dower, 421.
proceedings relative to insane persons and habitual drunkards, 421 to 423.
application to court in case of drunkards, 421.
when court may order sale of estate, &c., 421, 422.
disposition of proceeds of sale, 422.
proceedings when insane person seized of estate as trustee, &c., 422.
conveyance by order of court, valid, 422.
when performance of contracts by lunatic, &c., compelled, 422.

CHANCERY, COURT OF,
  powers and proceedings on bills for foreclosure or satisfaction of mortgages, 423 to 425.
  writs of ne-exeat, 425.
  when granted and when discharged, 425.
  granting of injunctions and staying proceedings at law, &c, 425 to 428.
  writs of injunction, when and how may be granted, 425 to 427.
  appeals to the supreme court, 428.
  when and how made, 428.
  proceedings thereon, 428.
CHANGE OF VENUE,
  in county court, how made, 437.
  in general for what causes and how made, 507.
  in criminal cases, when may be changed, 725.
  when changed, how trial conducted, 725.
  what county to pay costs, 725.
  when accused to give bail, 725.
  on failure, where to be imprisoned, 725.
  witnesses, when to recognize, 726.
  district attorney may apply for, 726.
  how granted, 726.
  (See *Venue.*)
CHATTELS,
  real, what to be, 314.
  chattel interests, what to be, 314.
CHATTEL MORTGAGES,
  when and how filed, 254.
  town clerk to enter names of parties to, in a book, 255.
  when invalid unless effect of continued by affidavit, 255.
  effect of copy as evidence, 255.
  requisites in order to be valid, &c., 389.
CHATTELS REAL,
  what estates to be denominated, 314.
  limitations on, 315.
CHATTEL INTERESTS,
  what estates to be denominated, 314.
  not subject to sale on execution, 314.
CHIEF JUSTICE,
  one of judges of supreme court to be, 29.
  one of circuit judges to be designated as such, 29.
  when and how chosen, 760.
CHILDREN,
  legal settlements of, 235, 236.
  when to support poor parents, 236, 237.
  how to inherit, 338.
  born after making of will, provision for, 356, 357.
  provision for, when omitted by mistake, 357.
  minor, allowance for maintenance of, 357.
  ib., care and maintenance of during pendency of suit for divorce, 396.
  ib., after divorce, 396.
  ib., though divorce not granted, 398.
  when legitimatized, 398.
CHIPPEWA COUNTY,
  boundaries of, 51.
CHURCHES,
  exempt from taxation, 139, 269.
  heretofore incorporated to be confirmed, 268.
CIRCUITS,
  judicial, 29.
  when judge may hold court in, other than his own, 761.
CIRCUIT COURTS,
  judicial power vested in, 28,
  powers and jurisdiction of, 30.
  terms of, 30.
  persons charged under bastardy act, when to recognize to, 245.
CIRCUIT COURTS,
  may alter or vacate town plots, 259.
  may make order for sale of real estate of religious societies, 268.
  their powers in relation to incorporation of villages, 292.
  may appoint receivers to corporations, and their powers thereon, 308.
  may grant divorces, their powers in relation thereto, 394 to 398.
  appeals to, from decision of commissioners to examine claims, &c., 372.
  proceedings therein, 373.
  divorces may be decreed in, 394.
  their powers in relation to proceedings in divorce, 394 to 398.
  terms of, when and where held, 411, 412.
  writs, &c., returnable to, and adjournments, &c., in certain cases, 412.
  one extra jury term may be held by, 412.
  special and adjourned terms may be held, 412.
  powers and jurisdiction of, 412, 413.
  when may award special venue, 413.
  jurisdiction of circuit courts in chancery, 413 to 423.
  (See *Chancery, court of.*)
  their powers in relation to insane persons and habitual drunkards, 421 to 423.
  appeals to, from probate courts, 431, 432.
  their powers thereon, 431, 432.
  to have equity jurisdiction in matters concerning waste, 583.
  ib. concerning nuisances, 584.
  powers and jurisdiction over officers, &c., of corporations, 594, 595.
  may appoint receivers to corporations, and their powers, 595, 596.
  may prescribe rules of pleading in suits against boats and vessels, 604.
  powers and jurisdiction of, 760, 761.
  how writs issued, tested and made returnable in, 760.
  what writs may issue in, 761.
  what seals to be used in, 761.
CIRCUIT JUDGES,
  to be judges of supreme court, 29.
  to be elected for each circuit, and to reside therein, 29.
  one of, to be designated as chief justice, 29.
  to be classified, 29.
  vacancy in office, how filled, 30.
  not to be elected within thirty days of a general election, 30.
  salary of, 30, 762.
  not to receive fees, nor hold any other office, 30.
  who eligible to office of, 30.
  may hold courts for each other, 30, 761.
  may be removed from office. and how, 30, 31.
  when may appoint clerks, 101.
  to approve of appointment of deputies, 101.
  to direct what books to be kept by clerk, 101.
  may receive of clerks taxes on suits, 101.
  when may appoint person to act as district attorney, 103.
  may appoint court commissioners, 104.
  when may remove clerk of court, 115.
  to charge grand jury, respecting trespasses on school lands, 226.
  same, relative to selling intoxicating liqors to Indians, 243.
  their powers and duties under law relative to plank and turnpike road companies, 276, 280, 281.
  their powers in relation to circuit courts and issuing writs, 412.

CIRCUIT JUDGES,
to be conservators of the peace, 412.
may enlarge time to answer, 415.
to have care and custody of insane persons and habitual drunkards, 421.
may issue writs of ne exeat and injunction, 425.
when to act as judge of probate, 430.
may make rules, and how, 438.
when not to hear or determine certain causes, 440.
when shall be personally liable to party injured, 440, 441.
when may grant rule to show cause why information should not be filed, &c., 639.
when to report case to supreme court, 728.
when and how elected, 759.
to take oath of office, 759.
when to enter on duties of office, 760.
classification of, 760.
how long each to hold, 760.
election of chief justice, 760.
their powers and duties, 760, 761.
proceedings when judge interested in cause, 761.
CITIES,
legislature to organize, and to restrict their powers, 35.
warrants for collection of taxes in, how made out, 149.
how certain taxes in, collected, 149.
provisions of tax law relative to towns to apply to, 163.
treasurer of, acting as collector, subject to same penalties as town treasurers, 163.
liable to loss of taxes occasioned by default of their officers, 163.
mayor and aldermen of, to constitute board of health, 229.
may grant licences for shows and exhibitions, 247.
CITIZENS,
of each state, entitled to privileges and immunities of citizens in the several states, 13.
and aliens equal, as to possession and enjoyment of property, 20.
CLAIMS,
against villages, how to be audited, 296.
against deceased persons, examination and adjustment thereof, 369 to 371.
disputed, when ordered to be paid, 374.
contingent, against deceased persons, 375.
accruing after time limited for presenting, 376.
on United States lands, action by persons holding, 610, 611.
(See *Actions.*)
CLERGY, BENEFIT OF,
plea, abolished, 713.
CLERKS,
of election, who to be, and how may be appointed, 67.
same to be sworn, 67.
to read chapter relative to violation of election laws at polls, 133.
of school districts, their duties in calling school meetings, 190, 191.
their general powers and duties, 192, 193.
of religious societies, their duties, 266, 267.
of villages, their duties and compensation, 303.
how elected, 294.
of probate courts, not to act as appraisers, &c., 430.
of courts, may issue blank process and seals to attorneys, 493.
may issue subpœnas, 516.
to receive and file certain papers, 525.
CLERKS,
may tax costs, 659.
to furnish sheriff with transcript of conviction, 730.
when to give witnesses certificates of travel and attendance, 678, 679.
CLERKS OF CIRCUIT COURTS,
to be chosen in each county, 30, 100.
if vacancy, judge to appoint, 30, 101.
to take oath and give security, 30, 100, 114.
entitled to copy of laws, 62.
their duties in relation to records and papers of notaries, 91.
their term of office, and when to commence, 100, 101.
their duties and fees, 101.
to appoint a deputy, and his duties, 101.
to procure books, 101.
to transmit to secretary of state quarterly accounts of taxes on suits, 101.
to pay over to their successors all taxes on suits in their hands, 102.
where to keep their office, 113.
when to keep same open, 113.
when and by whom may be removed, 115.
their duties in relation to marriage certificates, 392.
their fees therefor, 392.
to be clerk of county court, 434.
their powers and duties as such, 434.
when certificate of, to be attached to justice's docket, 527.
their fees, 661.
fee to be paid to on swearing jury, 674.
CLERK OF COUNTY COURT,
clerk of circuit court to be, 434.
his fees, 674.
CLERK OF SUPREME COURT,
to be appointed by court, 30.
entitled to copy of laws, 62.
to transmit copies of rules to clerks of circuit courts, 438.
may tax costs, 659.
his fees, 662.
CLERK OF BOARD OF SUPERVISORS,
entitled to copy of laws, 62.
when to perform certain duties of sheriff, 66.
when to transmit notices of certain vacancies to governor, 66, 67.
his duties as one of board of county canvassers, 70, 71, 72.
to make out and deliver certificates of election, 71.
to prepare and transmit certified statements of result of election, 71, 72.
to transmit to secretary of state list of county officers, 71.
if unable to attend district board, to cause statement of votes to be delivered, 73.
his compensation for services relative to elections, 76.
his duty when process against supervisors served on him, 94, 95.
his duties on appeals taken from board of supervisors, 97.
books and accounts of board to be deposited with him, 97.
his term of office, 99.
to take oath and give bond, 99, 114.
to appoint a deputy, and his powers and duties, 99.
when county board may appoint, 99.
his general duties, 99.
his duties as to accounts and records, 99, 100.
his duties on issuing county orders, 100.
same as to apportionment of school moneys, 100.

CLERK OF BOARD OF SUPERVISORS,
- same as to reporting relative to school moneys, and the organization of new towns, 100.
- his compensation, 100, 165, 166.
- where to keep his office, 113.
- when to keep same open, 113.
- when and by whom may be removed, 115, 116.
- to transmit to secretary aggregate valuations of property, 146.
- to make and deliver certificates of taxes, 147.
- to execute deeds of lands sold for taxes, 159.
- to record statement of tax sales, 160.
- when and how to advertise unredeemed lands, 160.
- when may receive taxes on lands sold, 160.
- when to bid in lands for county, 159.
- when may sell same and tax certificates, 159.
- on redemption of land, to execute certificate, 161.
- to pay over redemption moneys, 161.
- when to execute deed to purchaser on tax sale, 162.
- on failure to advertise unredeemed lands, when may afterwards advertise, 164.
- to distribute blank assessment rolls, 165.
- his fees for tax deeds, &c, 165, 166.
- to enter licenses for ferries, and deliver copy, 185.
- to furnish lists of rates of ferriage, 185.
- his duties in relation to common schools, 202.
- to make annual report to state superintendent, 202.
- penalty for neglect, 204.
- to deliver written statement annually to county treasurer, 202.
- his compensation for such services, 202.
- when may procure standards of weights and measures, 261.

CLERKS OF TOWNS, 126, 127.
- (See *Town Clerk.*)

CLERKS OF LEGISLATURE.
- to be elected in each house, 37.
- to deposit books, bills and papers of legislature with secretary of state, 83.
- when to furnish printer with copy of journals, 209.

CODICIL,
- to be included in term "will," 60.
- wills may be revoked or altered by, 354.
- (See *Wills.*)

COHABITATION,
- after divorce, how punished, 398.
- lewd and lascivious, 708.

COIN,
- town treasurers to pay over state taxes in, 150.
- ib. as to county treasurers, 157.
- levied on, need not be sold, 539.
- punishment for counterfeiting, &c., 699.
- (See *Forgery and Counterfeiting.*)
- payment for lands granted for improvement of Fox and Wisconsin rivers to be in, 770, 771.

COLLECTION OF TAXES, 149 to 157.
- school district, 199 to 201.
- (See *Taxes.*)

COLLECTORS,
- town treasurers to be, 129.
- their duties, 128, 149 to 157.
- treasurers of school districts to be, 191.
- their duties, 192, 200.
- (See *Town Treasurer, Schools.*)

COLLEGES,
- may be connected with university, 34.
- may be received as branches of university, 188.

COLLUSION,
- of guardian, not to prejudice infant heir, 336.

COLUMBIA COUNTY,
- boundaries of, 52.

COMMANDER IN CHIEF,
- governor to be, 26.

COMMENCEMENT OF SUITS, 493 to 498.
- style of writs and issuing and return of same, 493.
- writs to be sealed, 493.
- clerks may issue blanks and seals to attorneys, 493.
- where defendant to be sued, 494.
- to be by original writ, or declaration, &c., 494.

COMMERCE,
- with foreign nations and between the states, 8.

COMMISSIONS,
- secretary of state to seal, countersign and register, 81, 82.
- to take testimony in probate courts, how issued, 429.
- ib., to take the testimony of witnesses out of state, 520.

COMMISSIONERS,
- to revise and simplify the rules of practice, &c., to be appointed, 32.
- to determine appeals from supervisors in laying out roads, &c., how appointed, and their duties, 178, 179.
- *of the school and university lands,* who to constitute, 210.
- their powers and duties, 210, 211.
- when to sell school lands, 211.
- when may withhold same from sale, 211, 218.
- two to be a quorum, 211.
- their duties in relation to securing purchase money of school lands, 212, 213.
- in relation to re-appraisal of same and improvements thereon, 217.
- when may lay off school lands into village lots, 218.
- may appoint appraisers of same, 218.
- may lease improved school lands, 218.
- to have care and supervision of public lands, 218.
- when may cause surveys of school lands to be made, 218.
- not to purchase school or university lands, 219.
- to make annual report, 219.
- to increase appraisal of certain school lands to $1.25 per acre, 220.
- how to loan school moneys, 220, 221.
- may appoint commissioners to appraise lands offered in security, 220.
- duty of such commissioners, 221.
- may cancel mortgages, 35, 222.
- how to collect moneys loaned, 222.
- when to bid in and sell mortgaged lands, 222.
- to keep account of moneys loaned and report same annually, 223.
- records, books, &c., of, to be open for inspection, 224.
- *to appraise damages in opening plank and turnpike roads,* their powers and duties, 276 to 278.
- *to take acknowledgment of deeds in other states,* how appointed, 332.
- effect of such acknowledgment, 332.

COMMISSIONERS,
  their power to take oaths and depositions, 332.
  to take official oath, 332.
  to deposit oath, and impression of their seal with secretary of state, 332.
  to assign dower, 334.
  to examine and adjust claims against deceased persons, when to be appointed, 369.
  when not to be appointed, 369.
  to appoint time and place of meeting, and give notice, 369.
  publication of notice, 369.
  on death of, another to be appointed, 369, 370.
  time for presenting claims, 370.
  time may be extended, 370.
  when commission may be renewed, 370.
  to be sworn, and may administer oaths, 370.
  to report to probate court, 370.
  what claims they may try and decide, 370, 371.
  appeals from decision of, how made, and proceedings thereon, 372.
  to take testimony in probate courts, 429.
  commissioners appointed by the court, 508.
  to make partition, 573.
  to take testimony, their fees, 663.
  fees of, in other cases, 673.
  appointed to superintend publication Revised Statues, 742.
  his powers and duties, 742, 743.
COMMISSIONERS, COURT, 104.
  circuit judges may appoint, 104.
  their term of office and powers, 104.
  not to receive fees unless given by law, 441.
  when not to give advice or draft papers, 441.
  their fees, 663.
  judge of probate authorized to act as, 762.
  his powers and duties as such, 762.
COMMISSIONERS OF HIGHWAYS,
  town supervisors to be, 126.
  (See *Town Supervisors*.)
COMMISSIONERS OF SCHOOL AND UNIVERSITY LANDS,
  who to constitute board of, 35, 210.
  to take security on land sold, 35.
  to execute conveyances, &c., 35.
  may withhold lands from sale, 35.
  shall invest school and university funds, 35.
  their powers and duties, 210 to 226.
  (See *School and University lands*.)
COMMITMENT,
  upon sentence, form of in justices' court, 490.
  after arrest and before trial, form of, 491.
  where justice shall find he has not jurisdiction, 491.
  for trial in circuit court, 719 to 723.
COMMON JURISDICTION,
  of certain counties, 93, 94.
COMMON LAW,
  to continue part of the law of the state, 44.
  chapter 81, not to affect fathers' rights by, 407.
  of other states how proved, 523.
  abrogated as to writs of habeas corpus, 634.
COMMON,
  estates in, 317.
COMMON SCHOOLS, 34, 188 to 205.
  (See *Schools*.)
COMMUTATION,
  of punishment by governor, 731.
COMPANIES,
  transportation, to make and file statement, 496.
COMPANIES,
  when suits against not to abate, 496.
  (See *Corporations*.)
COMPANIES UNIFORMED, 227, 228.
  (See *Uniform Companies*.)
COMPENSATION,
  of senators and representatives in congress, 7.
  of president, 10.
  of members of legislature, 25.
  extra, never to be granted by legislature, 25.
  of public officers, not to be increased or diminished, 25.
  of governor, 26.
  of lieutenant governor, 27.
  of canvassers, inspectors and clerks of election, 76.
  of electors of president, 78.
  of county supervisors, 98.
  of clerk of supervisors, 100.
  of county treasurer, 110.
  of town officers, 131.
  of fence viewers, 137.
  of assessors in villages, 299.
  of village marshal, 300.
  of village treasurer and clerk, 303.
  of executors and administrators, 379.
  of guardians, 403.
  of appraisers of school lands, 764.
  of board of public works, 766.
  of superintendent, &c., of same, 766.
  (See *Fees*.)
COMPETENCY OF WITNESSES,
  inhabitants of county, town, &c., competent, when county or town, &c., interested, 95, 522.
  members of certain corporations not incompetent, 522, 526.
  (See *Witnesses*.)
COMPLAINT,
  against apprentice for misbehavoir, 406.
  of criminal offence, how made, 719.
  duty of magistrate thereon, 719.
COMPOUNDING,
  of debts, by executors, &c., 367.
  of offences, punishment for, 703.
COMPROMISING,
  with father of bastard child, by supervisors, 246.
  certain offences, 722, 723, 724, 725.
COMPUTATION OF TIME, 59.
  during which the right of alienation may be suspended in certain cases, 325.
  (See *Time*, *Limitations*.)
CONCEALMENT,
  of prisoner, to elude habeas corpus, 632.
  of cause of action how to affect limitation, 646.
  of stolen property, 690, 691.
  of offences, agreement for, 703.
  of death of bastard child, by mother, 708.
  of persons guilty of felony, 712.
CONCILIATION, COURTS OF, 31.
  their powers, 31.
CONCURRENT JURISDICTION,
  between state and United States, 50.
  between this state and other states, 50.
  (See *Jurisdiction*.)
CONDITIONS,
  nominal, annexed to grant, 317.
  same annexed to power, 324, 325.
CONFESSION,
  of judgment in justices' courts, 467.
  judgment on plea of, 535.
  of accused on indictment, 682.
CONGRESSIONAL DISTRICTS, 39.
  state divided into, 58.

CONGRESS,
  meetings of, 6.
  powers of, 7, 8, 16.
  members of, 68, 77, 78.
  (See *Senators, Members of Congress.*)
CONSCIENCE,
  rights of, 21.
CONSENT,
  of parent or guardian, to marriage of minor, 392.
  ib., to binding of apprentice, 404.
CONSOLIDATING CAUSES, 507, 508.
  when defendant may move, 508.
CONSTABLES,
  when may call to their aid the power of the county, 105.
  names of, to be transmitted to clerk of circuit court, 126, 127.
  to give security, 129.
  may serve process, 129.
  to be ministerial officers of justices, 129.
  to attend circuit courts, 129.
  suits against them and sureties, to be prosecuted within two years, 129.
  may collect highway taxes, 173.
  their duties therein, 173.
  to present names of persons selling or giving liquor to Indians, 244.
  penalty for neglect, 244.
  their powers and duties in relation to unclaimed property, 253.
  their fees for services in relation thereto, 254.
  proceedings against, 474.
  not to receive money for certain purposes, 481,
  not to purchase demands, 481.
  may collect execution after expiration of term, 483.
  to serve process issued by judge of probate, 429.
  their fees, 670.
  return of on writ to be evidence, 672, 673.
  to attend trial when required by justice, 673.
  their fees therefor, 673.
  their fees in county court, 674.
  duty to give information of gamblers, 707.
CONSTITUTION OF UNITED STATES, 5.
  how may be amended, 13.
  to be the supreme law of the land, 14.
  oath to support, by whom to be taken, 14.
  ratification of nine states sufficient for its establishment, 14.
  amendments to, 15 to 18.
CONSTITUTION OF WISCONSIN, 19.
  oath to support, by whom to be taken, 25.
  how may be amended, 36.
  copy of, to be forwarded to president, 39.
  when to be submitted for ratification or rejection, 39.
  who entitled to vote for or against, 39.
  vote on amendment of, how to be taken and returned, 72.
  when and how to be canvassed, 75.
  amendment of, to be certified, published and bound with laws, 75.
  an act to enable the people of Wisconsin to form a constitution, &c., 789 to 792.
CONSTRUCTION,
  of statutes, rules to be observed in, 58, 59.
  of words and phrases, 59.
  of powers in certain cases, 323.
  of devises, 353.
  of the word "executor," 359.
  of "judge of probate," 433.
  (See *Definitions.*)
CONTEMPTS,
  each house of legislature may punish, for and how, 79.
CONTEMPTS,
  what offences shall constitute, 79.
  to be deemed a misdemeanor, and how punished, 79.
  neglect or refusal to appear on subpœna, to be, 328.
  proceedings for, in justices' courts, 478.
  punishment for, 479.
  in probate courts, how punished, 430.
  judges of county courts may punish for, 437.
  for what, courts of record may punish, 439, 516.
  how may punish, 439, 516.
  proceedings as for, to enforce civil remedies, &c., 598.
  cases in which courts of record may punish for misconduct, 598.
  when may be punished summarily, 599.
  when notice, &c., to be given, 599.
  when attachment peremptory, 599.
  when order or attachment to issue, 599.
  attachment to answer without special order, 599.
  when court may award habeas corpus, 599.
  when habeas corpus may be allowed by judge, &c., 599.
  powers of sheriff, 600.
  when penalty of bond to be directed by court, 600.
  when to be directed by single judge, 600.
  keeping persons arrested, 600.
  to be discharged on giving bond, 600.
  when to be disharged only on order of court, 600.
  when penalty to be one hundred dollars, 600.
  bonds to be returned, 600.
  return of attachment, how compelled, 601.
  defendant, how kept, 601.
  interrogatories, evidence, &c., 601.
  when accused to be punished, 601.
  when sum to be paid to indemnify party injured, 601.
  fine in other cases, 601.
  time of imprisonment, 601.
  order and process of commitment, what to specify, 601.
  when to be imprisoned six months, &c., 601.
  when party liable to indictment, 602.
  default of defendant, 602.
  suit on bond, 602.
  damages therein, 602.
  when bond to be sued by attorney general or district attorney, 602.
  recovery and application thereof, 602.
  taking insufficient sureties, 602.
  sickness of defendants, &c., 603.
  persons arrested, how kept, 603.
CONTINGENT EXPENSES,
  of executive office, appropriations for, 81.
CONTINGENT REMAINDERS, 314, 315.
CONTINUANCES,
  in supreme court, when no quorum, 410.
  in probate courts, 432.
  in county courts, 435.
  in courts of record generally, 438.
  in justices' courts, 451, 452.
CONTRACTS,
  state not to pass law impairing obligation of, 9, 20.
  no member of legislature or state officer to be interested in certain, 25.
  relating to lands may be recorded, 331.
  when interest of deceased person in same may be sold to pay his debts, &c., 348.
  how sale to take place, 348.
  bond of indemnity to be given and assignment made, 348.

- CONTRACTS,
  - for conveyance of land, when executor to perform, 385.
  - for the sale of lands, &c., to be in writing, 388.
  - fraudulent, relative to goods, &c., to be void, 388, 389.
  - for sale of goods, when to be in writing, 388, 389.
  - marriage, a civil contract, 391.
  - specific performance of may be compelled, 419, 422.
  - in actions on joint, when proof of joint liability not necessary, 528.
  - (See *Fraudulent Conveyances and Contracts.*)
- CONTRIBUTION,
  - for support of poor relatives, 237.
  - when suit may be maintained for, against persons selling spirituous liquors, 242.
  - when stockholder may compel from his associates, 282.
  - remedy for, between heirs, devisees, &c., paying debts of deceased, 377.
  - by officers, &c., of corporations, may be enforced in chancery, 310.
  - between owners of lands subject to judgment, 549.
- CONVEYANCES,
  - county board may appoint agents to make, 93.
  - when may be made by town clerk, 127.
  - effect of omitting trust in, 320.
  - when made by trustee to be void, 320.
  - reservation of powers in, 323.
  - how powers granted in, 323.
  - instruments in execution of a power to be, 324.
  - of lands, how made, 326.
  - by husband and wife, 226.
  - form of, by deed of quit claim, 326.
  - effects of certain, 326.
  - covenants in, not to be implied, 326, 327.
  - of lands adversely possessed, 327.
  - execution and acknowledgment of, 327.
  - how executed in other states, 327.
  - how acknowledgment of authenticated, 327.
  - executed in foreign countries, 327.
  - acknowledgment by married woman residing in this state, 327.
  - by married woman residing out of this state, 328.
  - proof of execution by witness, 328.
  - proof, in case of death of witnesses, 328.
  - proceedings on refusal of grantor residing in this state, to acknowledge, 328.
  - how execution may be proved in case of death, &c., 328.
  - subpœnas for witnesses, 328.
  - punishment for refusing to appear or answer, 328.
  - filing copy of, with register in certain cases, effect of, &c., 328, 329.
  - certificate, to entitle deed to be recorded, 329.
  - not recorded, void, as against subsequent purchasers, 329.
  - of pews and slips, by whom may be recorded, 329.
  - effect of certain, as evidence, 329.
  - when not defeated by defeasance, 329.
  - definition of "conveyance" as used in chap. 59, 330.
  - transcribing records of, on division, &c., of county, 330.
  - what deemed sufficient seal upon, 330.
  - effect of, heretofore made and acknowledged according to laws then in force, 330.
- CONVEYANCES,
  - of real estate by executors and administrators 385, 386.
  - containing power of revocation, when void, 387.
  - of land, to be in writing, 388.
  - of personal property, when void, 388.
  - to delay or defraud creditors, void, 390.
  - void as to creditors, void as to heirs, 390.
  - definition of, 390.
  - made by infants, when valid, 419.
  - made by order of court in certain cases, to be valid, 422.
  - by officer after sale on execution, 547.
  - (See *Deeds.*)
- CONVICTION,
  - certificate of, to be made by justices and filed, 487.
  - of persons indicted, what necessary to, 682.
  - for manslaughter in first, second, third and fourth degrees, 685.
  - of receiver, may be had before conviction of principal, 691.
  - second, for selling lottery tickets, 705.
  - of principal felon, not necessary to conviction of accessories, 712.
  - punishment on, when none provided by statute, 729.
  - duty of certain officers on conviction, 730.
  - for capital offences, proceedings on, 730.
- CONVICTS,
  - insane, or quick with child may be respited, 730.
  - imprisonment of, 735.
  - expenses of keeping, how paid, 735.
  - poor, imprisoned for non-payment of fine, how discharged, 738.
- COPIES,
  - certified, of laws, deeds, &c., to be evidence, 82, 86, 90, 112, 114, 127.
  - ib. of bonds to sell liquors, 242.
  - ib. of chattel mortgages, 255.
  - of papers, records, &c., how certified to be evidence, 524.
  - attested, of the records and proceedings in probate courts to be evidence, 429.
  - for certified copies, fees paid to be allowed for, 678. (See *Evidence.*)
- CORN,
  - standard weight of, 261.
- CORONERS,
  - when and how chosen, and term of office, 28, 107.
  - to execute bond, 107.
  - when to act as sheriff, 107.
  - subject to same liabilities and penalties as sheriff, 107, 108.
  - not to practice as attorney or counsel, 107.
  - when to be keeper of jail, 107.
  - when process to be directed to, 108.
  - to serve process issued by judge of probate, 429.
  - person receiving execution, deemed, 539.
  - their fees, 670.
- CORONER'S INQUEST, 731 to 734.
  - (See *Inquests.*)
- CORPORATIONS,
  - not to be created by special act except in certain cases, 35.
  - banking, how may be incorporated, 35.
  - laws relating to, may be altered or repealed, 35.
  - when the word "person" may be applied to, 59.
  - property of, where to be assessed, &c., 139, 140.
  - taxes on personal estate of, how collected, 140.

CORPORATIONS,
- organized counties to be, for certain purposes, 92.
- towns to be, 118.
- regents of the university to be, 186.
- school districts to be, 189.
- town superintendents to be, for certain purposes, 197.
- medical societies to be, 231.
- county superintendents of poor to be, 241.
- not to exercise banking powers, unless authorized, 255.
- trustees of religious societies to be, 266.
  - (See *Religious Societies.*)
- cemetery associations, to be, 270.
  - (See *Cemetery Associations.*)
- proprietors of library and lyceum associations, to be, 272.
  - (See *Libraries and Lyceums.*)
- plank and turnpike road companies, to be, 274.
  - (See *Plank and Turnpike Road Companies.*)
- manufacturing, mining, &c., associations, to be, 286.
  - (See *Manufacturing, Mining, Mechanical, &c. Associations.*)
- inhabitants of villages to be, 292.
- legislature to provide for incorporating and to restrict their powers, 35.
  - (See *Villages.*)
- electric telegraph lines, 306.
  - (See *Telegraph Lines, Electric.*)
- *general provisions relating to corporations,* 307.
- general powers of corporations, 307.
- may make by-laws and impose penalties, 307.
- first meeting, how may be called, 307.
- when justice may call meeting, and how, 307.
- when meeting valid however called, 308.
- powers of members when assembled, 308.
- may hold and convey lands and transfer shares, and how, 308.
- to continue three years after dissolution for certain purposes, 308.
- when circuit court may appoint receivers for, 308.
- court to have chancery powers in such cases, 308.
- franchises and property of those authorized to receive toll may be sold on execution, 308.
- proceedings of officer on such execution, 308, 309.
- who to be considered the highest bidder thereon, 309.
- officer to deliver possession to purchaser, 309.
- his right to receive toll, 309.
- power of purchaser and his assigns to recover penalties, 309.
- powers, duties and liabilities of corporation after sale, 309.
- how may redeem franchise, 309.
- corporation liable to warrant of distress for damages assessed, 309, 310.
- in what county proceedings on execution may be had, 310.
- proceedings against corporation or its members may be in law or equity, 310.
- powers and duties of attorney general relative to corporations, 310.
- same as to committee appointed by legislature, 310.
- when admission of members of, not evidence, 526.
- when member of may testify, 526.
- *proceedings by and against, in courts of law,* 593.

CORPORATIONS,
- when foreign may sue in this state, on giving security for costs, 593.
- suits against, how commenced, 593.
- proceedings on return of process duly served, 593.
- proof of domestic, 593.
- reciting acts of incorporation, 593.
- mistake in naming, 593.
- attachment against foreign, 593.
- when foreign to recover double costs, &c., 593, 594.
- *proceedings against, in chancery,* 594.
- injunctions against in certain cases, 594.
- issuing and continuing of injunctions, 594.
- jurisdiction of court over officers, &c., of, 594.
- proceedings to execute powers of court, 595.
- sequestrating corporate property, on return of execution unsatisfied, 595.
- distribution upon decree, 595.
- surrender of corporate rights by non-user, &c., 595.
- proceedings against certain insolvent, 595.
- who may apply for injunction, &c., 595.
- court may appoint receivers, 596.
- powers and obligations of receivers, 596.
- when stockholders, &c., may be made parties, 596.
- making directors, &c., parties after decree, 596.
- bill against stockholders, &c., 596.
- proceedings thereon, 596.
- proceedings if corporation be insolvent, 596.
- distribution of property, 596, 597.
- when stockholders compelled to pay on stock held by them, 597.
- enforcing payment by directors, &c., 597.
- discovery by corporation may be compelled, 597.
- ib. by officers, &c., 597.
- answers, how far evidence, and how compelled, 597.
- not to be used on indictment, 597.
- restraining proceedings at law against, 597, 598.
- incorporated libraries, &c., excepted, 598.
- *informations against,* 637.
- collection of costs on same, 639.
- may be restrained, and receiver of its property and effects appointed, 639.
- *actions by and against in justices' courts,* 448, 466.

CORRECTIONS,
- of errors in enrolled chapters of revised statutes, &c., 802.

CORRUPTION OF BLOOD,
- attainder of treason, not to work, 12.

COSTS,
- recoverable in suits by and against counties, 95.
- court commissioners may tax, 104.
- to be a lien on lands sold for taxes, and when to be apportioned, 163.
- who to pay on appraisal of damages in laying out roads, 177.
- same on appeal from decision in laying out same, 179, 180.
- who to pay in case of encroachments on the highways, 181, 182.
- relatives to pay on proceedings against to to support poor, 237.
- when court to award, on application to sell lands, 351.
- in proceedings against master for misusing apprentice, 405.

COSTS,
in proceedings against apprentice, 406.
in proceedings in contested cases in probate courts, 432.
when complainant and when defendant to pay, 413, 416.
when solicitor or counsel to pay, 414.
security for in justices' courts, 444.
in same, judgment to be with, 467.
on appeal from justices' courts, 478.
when witness to pay, 480.
when complainant to pay, 486.
security for, by complainant, 488.
defendant may be committed in certain cases, till paid, 488.
in civil cases before justices, who shall recover, 672.
when court may give or refuse, 672.
when justice to tax costs, 672.
notice in such case not necessary, 672.
guardian of infant, when liable for, 498.
security for, in county courts, 434.
security for, in general, 501, 658.
when attorney liable for, 501, 659.
on change of venue, to abide event of suit, 507, 725.
allowance to commissioners, to be taxed in bill, 508.
in suits by legatees against executors, &c., 553.
in suits against legatees, 555.
heirs and devisees, to what extent liable for, 555.
how apportioned, 557.
in ejectment, 566, 569.
when foreign corporations may recover double, 593, 594.
in partition suits, 578, 579.
on judgment on information, how collected, 639.
if plaintiff's bill be dismissed, when defendant shall recover costs, 654.
how paid in other cases in chancery, 654.
in what cases plaintiff shall recover costs in proceedings at law, 654, 655.
when shall recover no more costs than damages, 655.
when defendant shall recover costs, 655.
when executors, &c., shall not pay costs, 655.
when one of several defendants acquitted entitled to costs, 655.
costs, when several suits brought on one bond, note, &c., 655.
ib., when one of several defendants acquitted in action on contract, 655, 656.
single costs on recovery of double damages, &c., 656.
when defendant to recover taxed costs and one half more, 656,
to whom double or treble costs belong, 656.
costs, when several issues, 656.
when costs for issues found for plaintiff not allowed, 656.
costs on general demurrer, 656, 657.
on plea of misnomer, 657.
on reversal of judgment. 657.
costs and damages on affirmance, &c., 657.
double costs on affirmances, 657.
costs on neglecting to prosecute writ of error or appeal, 657.
costs and damages on appeals from circuit and probate courts, 657.
ib., on countermanding notice of trial, 657.
liability of the people for, 657.
relators liable for, 657.
costs on writs of mandamus, 657.
ib., on attachment, 658.

COSTS,
in suits brought in name of another, 658.
if plaintiff appeal from justices' court, when not to recover, 658.
interest accrued after judgment, not to affect question of costs, 658.
costs where money brought into court, 658.
of filing security for costs, 658.
when security may be required, 501, 658.
ib.. after suit brought, 658.
order for security, &c., 501, 658, 659.
how same given, 501, 659.
bond to be filed and notice given, 501, 659.
exception to sureties, 659.
justifying by sureties, &c., 659.
when attorney for plaintiff liable for, 501, 659.
how may relieve himself, 502, 659.
taxation of costs, 659.
by whom costs taxed in supreme court, 659.
by whom taxed in courts of record, 659.
when fees to be taxed, 659.
not to be collected until taxed, 659.
taxing costs of foreclosures of mortgage, 660.
duties of taxing officers, 660.
certain charges to be proved, 660.
evidence of right to costs in certain cases, 660.
costs to be taxed before entered in record, &c , 660.
notice of taxation to be given, 660.
what, county to pay, where venue is changed 725.

COUNSEL,
to be allowed party accused, 17, 20, 681.
when to pay costs, 414.
(See *Attorneys.*)

COUNSELLORS,
sheriff, &c., not to practice as, 107.
(See *Attorneys.*)

COUNTERFEITING,
securities and coin of United States, 8.
and forgery, 697 to 700.
(See *Forging and Counterfeiting.*)

COUNTIES,
to be but one system of government for, 25.
when not to be divided except by vote of the people, 37.
division of state into, 50.
boundaries of, 50.
boundary lines of, to run on U. S., survey lines, 58.
when separated by river or creek, the main channel to be division line, 58.
rights, powers and duties of, 92.
organized for judicial purposes, how governed, 92.
portions of state not organized into, how regarded, 92.
when real and personal estate deemed property of, 93.
how real estate of, may be conveyed, 93.
powers of, to be exercised by board of supervisors, 93.
common jurisdiction of, on certain lakes and upon the Mississippi, 93, 94.
liable for escape of prisoner through insufficiency of jail, 94.
legal proceedings by or against, how to be conducted, 94.
name in which shall sue and be sued, 94.
process against, on whom to be served, 94.
inhabitants of, to be witnesses when county interested, 95.
suits for and against, may be prosecuted before a justice, 95.
costs recoverable by or against, 95.

COUNTIES,
when execution not to issue on judgment county should pay, 95.
when to be considered as a town for purposes of town government, 125, 126.
when to pay state tax, 147.
when lands to be bid off for, 159.
when clerk of supervisors to execute deeds of release to, 159.
liable to loss of taxes occasioned by default of their officers, 164.
school moneys to be loaned in, 220.
when liable for support of poor, 239.
when and how poor may be supported by, 241.
when moneys arising from sales of unclaimed property to belong to, 253.
new, records of deeds may be transcribed into books of, 330.
to furnish books for judges of probate, 432.
ib., for county courts, 436.
suits against, where may be brought, 494.
offences committed near boundary line of, 712.
mortal wound in one county and death in another, 712.
COUNTY BUILDINGS,
each county organized for judicial purposes to provide, 94.
who to build and keep in repair, 96.
to be insured, 96, 110.
COUNTY COURTS,
their powers and duties in compelling the support of the poor, 236, 238.
to be established, 433.
where held, 433.
to be a court of record, 433.
their powers and jurisdiction, 433, 434.
to perform the duties of judges of probate, 433.
terms of court, when and where held, 434.
clerk of circuit court, to be clerk of county court, 434.
process from, to whom directed and by whom served, 434.
may require security for costs, 434.
amicable suits may be entered in, 434, 435.
power of court to issue writs, 435.
writs how issued and made returnable, 435.
proceedings on return of same, 435.
continuances, 435.
when issue tried by court and when by jury, 435.
when and how demand for jury to be made, 435.
proceedings in obtaining same, 435, 436.
attachments in, 436.
actions of replevin in, 436.
general provisions of statutes to apply to, 436.
county to provide books, and the judge blanks, 436.
appeals and writs of error, 436.
causes may be removed from to supreme court, 436.
bills of exception, 436, 437.
when orders to be made in open court, 437.
may punish for contempts, 437.
adjournment of courts, 437.
appeals from justices' courts to be made to, 437.
when judge interested, &c., how cause tried, 437.
change of venue in, how made, 437.
may adopt rules relative to appeals from justices' courts, 478.
jurisdiction of, in suits against boats and vessels, 605.
costs and fees in, 674.
COUNTY COURTS,
(See *Probate Courts.*)
COUNTY JUDGES,
their powers and duties under law relative to plank and turnpike roads, 284.
their fees in relation thereto, 284.
when elected, and term of office, 433.
to take oath of office, 434.
to provide blanks and procure seal, 436.
fees of, to be taxed by judge of circuit court, 437.
may punish for contempts, 437.
how may be removed from office, 437.
not to try causes in which they are interested, &c., 437.
may make rules of practice, 438.
their fees, 666.
(See *Probate, Judge of.*)
COUNTY OFFICERS,
how and when to be elected, 37, 76.
entitled to certificate of election, 71.
special elections for, to be ordered by sheriff, 66.
when to be elected, 76.
regular term of, when to commence, 76.
where to keep their offices, 113.
when to keep same open, 113.
when to take official oath, and file bond, 114.
their deputies to take oath, and when, 114.
copies of documents, &c., certified by them to be evidence, 114.
subject to removal, 114.
not to purchase town or county orders at a discount, 150.
(See *Officers.*)
COUNTY ORDERS,
board of county supervisors may issue, 96.
amount to be limited, and no interest to be paid thereon, 96.
to be countersigned by chairman of board, 97.
returned, to be examined and destroyed, 98.
how issued and entered by clerk of supervisors, 100.
in what order to be paid, 109.
payable for taxes, 150.
COUNTY POOR HOUSES, 241.
COUNTY SEATS,
how to be removed, 37.
county courts to be held at, 433.
COUNTY SUPERVISORS.
boards of, legislature may confer certain legislative powers upon, 25.
may appoint agents to sell and convey real estate of county, 93.
board of, of whom to consist, 95, 126.
a majority entitled to a seat, to constitute a quorum, 95.
when county consists of but one town, town supervisors to constitute county board, 95.
when and where to hold county meetings, 95.
may hold special meetings, and may adjourn, 95.
their general and special powers, 95, 96.
to have a seal, and sit with open doors, 96.
to elect a chairman, 97.
chairman of, to administer oaths, and countersign county orders, 97.
not to allow account unless verified by affidavit, &c., 97.
their duties on organizing new towns, 97.
appeal from their decision may be taken, 97.
their books, &c., to be open for inspection without charge, 97.

COUNTY SUPERVISORS,
- to furnish assessment rolls, and books, &c., for county officers, 98.
- their duties in relation to returned county orders, 98.
- to publish annual report of receipts and expenditures, 98.
- how may call special meetings, 98.
- their compensation, 98.
- penalty for refusal or neglect to perform their duties, 98.
- when may appoint county treasurer, 109.
- when to cause treasurer's bond to be prosecuted, 110.
- when may appoint county surveyors, 113.
- when and how may remove their clerk, 115, 116.
- when to make assessment roll, 145.
- their duties in equalizing assessments, 146.
- may alter description of lands on assessment roll, 146.
- to assess taxes for support of schools, 147.
- to determine and apportion county and state tax, 147.
- may authorize their clerk to sell tax certificates and lands bid in for taxes, 159.
- may issue tax deeds when certificate lost, 161.
- when may refund purchase money and demand return of deed, 162.
- their duties in relation to taxes for lands erroneously described, &c., 162.
- when may refund taxes improperly paid, 163.
- to add losses on taxes to next year's taxes on towns, &c., 164.
- when appeals allowed to, relative to roads, 180.
- may raise money for bridges, and amount of same, 182, 183.
- may grant licenses for ferries, 96, 184.
- to fix and regulate rates of ferriage, 184.
- may abolish distinction between county and town poor, 241.
- mny elect county superintendents of poor, 241.
- when may levy tax to support poor, purchase farm, &c., 241.
- when to exercise powers and duties of town supervisors, 241.
- to procure set of weights and measures, 260.
- to furnish seals for circuit, county and probate courts, 311.
- when may appoint a place for holding courts, 440.
- to make lists of jurors, 511.
- to allow certificates of attendance of jurors, 515.
- to be inspectors of prisons, 735.

COUNTY SUPERINTENDENTS OF POOR,
- when and how may be elected, 241.
- their term of office, 241.
- to be a corporation, 241.
- their powers and duties, 241.

COUNY SURVEYORS,
- when to be elected and term of office, 112, 113.
- to take oath and give bond, 112.
- may appoint deputies, 112.
- their certificate to be evidence, 112.
- how survey made when surveyor and his deputies interested, 112.
- their general duties, 112.
- their fees, 112, 113.
- when board of supervisors may appoint, 113.
- how to proceed in subdividing sections, 113.

COUNTY TAXES,
- county board of supervisors may order to be levied, 96.
- county orders to be received in payment of, from town treasurers, 109.
- (See *Taxes*,)

COUNTY TREASURER,
- his term of office, 108.
- to take oath and execute bond, 108, 114.
- to appoint deputy, and when he may act, 108.
- when board of supervisors may appoint, 109.
- who not to hold office of, 109.
- his general duties, 109, 110.
- how to pay county orders, 109.
- when to transmit to state treasurer moneys received for licenses and fines, 109.
- books and papers of his office to be delivered to his successor on oath, 110.
- penalty for neglect, 110.
- when to insure county buildings and receive insurance moneys, 110.
- his compensation, 110.
- when his bond to be prosecuted, 110.
- to pay out moneys only on order of the board or supervisors, 109.
- where to keep his office, 113.
- when to keep same open, 113.
- to charge towns with state and county taxes, 148.
- to file town treasurer's bond and give receipt, 148.
- his duties on return of assessment rolls, 152.
- when to indorse town treasurer's bond satisfied, 155.
- when may issue warrant for taxes on personal property, 155.
- his duties when town treasurer neglects to pay over moneys, 156, 157.
- how to pay over certain moneys, 157.
- returned taxes may be paid to, 157.
- when to pay over state tax, 157.
- to pay same in coin, 157.
- to make out and publish notice of returned lands, 157, 158.
- to make and file affidavits of same, 158.
- when to commence sale, 158.
- may require immediate payment, 159.
- when may re-sell, 159.
- to give certificates of sale, 159.
- to deposit with clerk of supervisors statement of sales, affidavits, &c., 160.
- to record such statement, 160.
- to countersign certificates of redemption, 161.
- when to withhold lands from tax sales, 162.
- when deeds, 162.
- when may sell lands omitted to be sold on day fixed for tax sales, 164.
- penalty for failure to pay moneys into state treasury, 165.
- his books, &c., to be evidence, 165.
- his fees on sale of lands for taxes. 166.
- to apply for and receive school moneys of state treasurer, 205.
- to give notice of receipt of same to town superintendents, 205.
- his duties in relation to moneys received from sales of unclaimed property, 253.
- his duties as sealer of weights and measures, 260.
- his fees as such, 261.
- penalty for neglect of duty as sealer, 261.
- moneys collected for penalties and forfeitures, when to be paid to, 623.

COUNTY TREASURER,
to collect same in case of neglect, 623.
suits against, where may be brought, 494.
COURT HOUSES,
each county to provide, 94.
when none, &c, board of supervisors to appoint, 440.
place appointed by supervisors, to be, 440.
COURTS, 28.
to charge grand jury relative to breach of election laws, 133.
when may authorize the use of a temporary seal, 311.
what are courts of record, 438.
their powers, 438.
judges of may make rules, 438.
proceedings to procure uniformity of practice therein, 438.
suits, &c., not discontinued by a vacancy, 438.
ib., by failure or alteration of any term, 438.
omission to adjourn, &c., not to vitiate proceedings, 438.
when may cause seal to be destroyed and new one to be procured, 438, 439.
may punish certain acts as for criminal contempts, 439.
punishment therefor, 439.
when judge may appoint another place for holding, 439, 440
appointment, how made and published, 440.
when board of supervisors may appoint place for holding, 440.
place appointed to be deemed court house, 440.
sittings of, to be published, 440.
when not to transact business on Sunday, 440.
writs, proceedings, &c., to be in the English language and how made out, 440.
in what cases judge not to sit or take part in proceedings, 440.
when not to have a partner or be interested in costs, 440.
when circuit judges to be personally liable to party injured, 440, 441.
judges, &c., not to receive fees unless given by law, 441.
when not to give advice or draft papers, 441.
when officers of, not liable to arrest, &c., 441.
when to license persons to practice as attorneys, 441.
when parties may prosecute or defend, in person or by attorney, 411.
warrant of attorney need not be filed, 441.
when judge or justice not to appear as attorney, 441.
may make rules respecting depositions, 518, 519.
cases in which may punish for misconduct, 593, 599.
proceedings in same, 599.
(See *Supreme Court, Circuit Courts, County Courts.*)
COURT OF CHANCERY, 413 to 428.
(See *Chancery Court of.*)
COURT, CIRCUIT, 28 to 30, 411.
(See *Circuit Courts.*)
COURTS OF CONCILIATION, 31.
COURT COMMISSIONERS, 104, 441, 762.
(See *Commissioners, Court*)
COURT, COUNTY, 433 to 437.
(See *County Courts.*)
COURT JUSTICES', 442 to 492.
(See *Justices' Courts.*)
COURTS, MUNICIPAL AND INFERIOR, 28.
COURT, PROBATE, 28, 428 to 433.
(See *Probate Court.*)
COURT, SUPREME, 28, 29, 409, 410.
(See *Supreme Court.*)
COVENANT,
not to be implied in conveyances or mortgages, 326.
CRAWFORD COUNTY,
boundaries of, 52.
CREDITORS,
what conveyances deemed fraudulent against 318.
profits of land liable to, in certain cases, 319.
beneficial powers liable to, 322.
when may compel execution of trust power, 323.
neglecting to demand debt due from deceased person, when to be barred, 375.
of deceased persons, claims of, how adjusted, 369 to 371.
when and in what order to be paid, 374.
when claim of, to be barred, 371, 372, 375.
when executor, &c., liable to, 375.
when may recover claim of heirs, &c., 376.
when suit may be brought by, on bond of executor, 383.
who to be deemed, under provisions of sec. 5, chap. 76, 389.
when conveyances, &c., void as against, 388, 389.
may file bill in chancery after return of execution unsatisfied, 414.
their lien on buildings, 616 to 618.
when and how may acquire interest of purchaser an execution, 545, 546.
CRIMES,
trial of, against United States to be by jury, and where held, 12.
no person to answer for, unless on presentment or indictment, except in certain cases, 16, 20.
committed under territory, may be prosecuted under state, 38.
person committing, not incompetent as witness, unless convicted, 522.
rights of persons who are accused of, 681, 682.
(See *Rights.*)
general provisions concerning, 711, to 713.
accessory to, before the fact, how punished, 711.
how tried, 712.
after the act, 712.
how tried, 712.
on indictments for libel, truth may be given in evidence, 712.
jury to determine law and fact, 712.
offences committed near boundary of county, 712.
mortal wound in one county and death in another, 712.
ib., out of state and death in state, 712.
allegation in indictment for embezzlement, and evidence thereof, 713.
what deemed proof of ownership of personal property, 713.
fines, &c., may be recovered by indictment, 713.
when before justices of the peace, 713.
plea of benefit of clergy abolished, 713.
definition of "felony," 713.
proceedings to prevent the commission of, 717 to 719.
officers authorized to keep peace, 717.
complaint, how made, 717.
warrant and arrest, 717.
examination of complainant, 717.
ib. of witnesses for prisoner, 717.
prisoner to have counsel, 717.

CRIMES,
  when to give recognizance, &c., 717.
  when discharged, 718.
  to be committed if he refuse to recognize, 718.
  when complainant to pay costs, 718.
  costs, when no order respecting is made, 718,
  appeal allowed, 718.
  witnesses to recognize on appeal, 718.
  proceedings on appeal, 718.
  recognizance when to remain in force, 718.
  not recognizing, how afterwards discharged, 718.
  recognizances transmitted to court, 718.
  when person ordered to recognize, on view of court, 719.
  person going armed to give security, &c., 719.
  court may remit penalty, 719.
  surety may surrender principal, 719.
CRIMINAL CASES,
  jurisdiction of justices in, 484 to 492.
  trials in, 726, 727.
  (See *Trials*.)
  judgments in, 729 to 731.
  (See *Judgments*.)
CRIMINALS,
  fleeing from justice to be delivered up on demand of executive, 13.
  in what county to be tried, 725.
  (See *Accused, Fugitives*.)
  arrest and examination of, 719 to 723.
  trials of, 726, 727.
  pardons, 731.
  imprisonment of, 735.
CRIMINAL PROCEEDINGS, 714 to 731.
  how carried on, 31.
  commenced under territorial government to be continued, 38.
CRUELTY,
  when cause for divorce, 394, 395.
  apprentices to be defended against, 405.
  to animals, punishment for, 710.
CURTESY,
  when husband to hold as tenant by, 336.
  when tenant by, liable to action for waste, 581.
CUTTING TREES,
  penalty for, 257, 695, 696. (See *Trees*.)
DAMAGES,
  for making drains, taking gravel, &c., how to be appraised, 169.
  same for laying road through inclosed or improved lands, 175, 176, 177.
  consequent on laying out roads, how audited and paid, 177.
  on protested bills of exchange, 263.
  for taking lands, &c., by road companies, how appraised, &c., 276 to 279.
  assessment of, for opening and widening streets, &c., in villages, 298, 299.
  mortgagee liable to, for neglect to discharge mortgage, 331.
  to be recovered by widow with dower, 335, 336.
  recoverable for misconduct, &c, of executor, &c, on sale of real estate, 352.
  when to be paid by person neglecting to deliver will to probate court, 355.
  recovered of master, to be property of apprentice, 405.
  on dissolution of injunction, 427.
  may be awarded by supreme court on appeals, 428.
  assessment of, 533.
  in ejectment, 567.
  proceedings to recover, 567.
  measure of, in proceedings for contempts to inforce civil remedies, &c., 602.
DAMAGES,
  suggestion of, when judgment in favor of person entitled to office, 637.
  when double recovered, costs to be single, 656.
  on affirmance of judgment, 657.
DAMS,
  malicious injury to, 694.
DANE COUNTY,
  boundaries of, 52.
DANGEROUS WEAPON,
  when death ensues in correcting child without use of, 683.
  killing another in heat of passion with, 684.
  robbing, being armed with, 686.
  assaulting, being armed with, 686.
  committing burglary, being armed with, 689.
  persons going armed with, when to give security, 719.
DEAD BODIES,
  inquests on, 731 to 734.
  (See *Inquests of the dead*.)
DEATH,
  of surviving trustee, trust to vest in chancery, 320.
  of one, survivor may execute power, 324.
  on death of witnesses to deed, how same may be proved, 328.
  of master, to discharge apprentice, 406.
  of party, not to abate suit, 508, 509, 510.
  of demandant in real and mixed actions, effect of, 509, 510.
  of any of joint defendants, 510.
  of public officer, &c., prosecuting, not to abate suit, 510.
  of plaintiff, in suit in name of one for use of another, 510.
  on death of justice, how proceedings before may be proved, 528.
  ib. of officer, proceedings to compel the delivery of books and papers, 625.
  of bastard, punishment for concealing, 708.
DEBTOR, INSOLVENT, 647 to 651.
  (See *Insolvent Debtor*.)
DEBTS,
  no imprisonment for, 20.
  public, when, how, for what purposes and to what extent, may be contracted, 32, 33.
  of road companies, not to exceed fifty per cent of capital paid in, 282.
  when same to be paid by stockholders individually, 282, 283.
  when real estate may be sold by executor, &c., to pay, 314.
  of testator, estate liable for payment of, 357.
  of deceased persons, personal estate first chargeable with, 367.
  and legacies of deceased persons, payment of, 369 to 378.
  order of payment, 374.
  when executor, &c., to pay, 374.
  of ward, guardian to collect and pay, 401.
  of insane persons, &c., how to be paid, 421, 422.
DECLARATION,
  of independence, 1.
  of rights, 19, 20.
  suits may be commenced by, 494.
  duties of sheriff in serving, 494.
  when to be served on defendant arrested and in prison, 496, 500.
  when plaintiff to declare, 503.
  name of attorney to be stated in, 441.
  in ejectment, 562.
  in debt, assumpsit and trover for the collection of penalties, &c., 622.
  (See *Pleadings*.)

DECREE,
for conveyance of land by executors, &c., 385, 386.
against absent defendant, 417, 418.
effect of final, 418.
need not be enrolled, but copy to be signed by court and filed with papers, 418.
title to land may be passed by, 418.
how enforced, 419.
for sale of mortgaged premises, &c., 423 to 425.
of probate court, presumption in favor of, 430.
DEED,
of lands sold for taxes, 159, 161, 162.
effect of such deed, 162.
given for taxes, void, if tax has been paid, 164, 165.
when need not be executed to state to vest title, 223.
when governor to execute, 223.
purchaser of land from state, when entitled to, 223.
conveyance of land by, 326 to 331.
(See *Conveyances.*)
on sales of mortgaged premises to be executed by sheriff, 424.
acknowledged without state, if recorded, to be evidence, 529.
DEEDS, REGISTERS OF,
when and how chosen, and term of office, 28, 110.
(See *Register of Deeds.*)
DEFAULT,
of defendant, after return of declaration personally served, 494.
in actions of ejectment, 564.
when conclusive, 566.
of defendant, when to be entered, 533.
when and how may be taken off, 533.
DEFAULTERS,
ineligible to office, 37.
DEFEASANCES,
deed of, to be recorded in order to defeat original conveyance, 329.
DEFECTIVE EXECUTION,
of power, relief against, 325, 326.
DEFECT OF HEIRS,
lands shall escheat to state, 33, 339.
DEFINITION OF WORDS AND PHRASES, 59.
of words importing the singular and plural, 59.
of words purporting to give joint authority to three or more, 59.
"grantor" and "grantee," 59.
"highway," "inhabitant," and "insane person," 59.
"issue," "land," "real estate," and "real property," 59.
"month," "year," and "year of our Lord," 59.
"oath," "affirmation," "sworn," and "affirmed," 59.
"person," "preceding," and "following," 59.
"folio," 60, 677.
"qualified," "seal," and "town," 60.
"will," "written," and "in writing," 60.
"heretofore" and "state," 60.
"powers," 321.
"grantor of a power," "grantee of a power," 326.
"purchaser," and "conveyance," 330.
"by right of representation," 340.
"executor," 359.
"creditors," 389.
DEFINITION OF WORDS AND PHRASES,
"lands," "estate and interest in lands," and "conveyance," 390.
"spendthrift," 403.
"judge of probate," 433.
"murder," in first, second and third degrees, 682.
"justifiable homicide," 683.
"excusable homicide," 683.
"manslaughter," in first, second, third and fourth degrees, 683, 684.
"felony," 713.
DEGREES,
regents of University may confer, 187.
of kindred, how computed, 339.
of murder and manslaughter, 682 to 685.
DELIVERY,
and possession necessary to certain transfers of goods, 389.
of books and papers by public officers, how compelled, 624.
(See *Books.*)
DEMURRER,
in chancery, 415, 416.
special allowed, 502.
general, costs on, 656.
(See *Pleadings.*)
DEPOSITIONS,
court commissioners may take, 104.
may be taken by commissioners to take acknowledgment of deeds in other states, 332.
when may be used in probate courts, 429, 430.
in justices' courts, 453.
of witnesses within this state, 516 to 518.
witnesses, how may be compelled to give, 518, 520.
of witnesses out of this state, 518, 519.
taken to perpetuate testimony, 519 to 522.
taken in this state to be used in courts of other states and countries, 522.
of party, when may be taken, 523.
to be used before justices, how taken out of state, 528.
in cases of forcible entry and detainer, 606.
when fees for taking not, allowed in justices' court, 672.
DEPUTIES,
of county officers, to take and subscribe oath of office, 114.
of clerks of supervisors, 99.
of clerk of circuit court, 101.
of county treasurer, 108.
of register of deeds, 111.
of county surveyors, 112.
of town clerks, 127.
DEPUTY SHERIFFS,
to be appointed by sheriff, 105.
appointment and revocation to be in writing, 105.
his general powers and duties, 105, 106, 107.
not to practice as attorney or counsel, 107.
DEPUTY SECRETARY OF STATE, 82.
DESCENT,
of real property of religious societies, 268.
in certain cases to be subject to execution of trust, 319.
law of, 338, 339.
lineal descendants in equal degrees to take in equal parts, 338.
widow, when to inherit, 338.
when father to inherit, 338.
when mother to take, 338.
when brothers and sisters to take, 338.
when other relatives to inherit, and how, 338, 339.

DESCENT,
illegitimate children to inherit from mother, 339.
when considered heir of father, 339.
estate of illegitimate child, to whom to descend, 339.
when child to be considered legitimate, 339.
computation of degrees of kindred, 339.
half blood, how to inherit, 339.
effect of advancement to heir, 339.
how advancements estimated, 340.
how, in case of death of heir advanced, 340.
when gifts, &c., to be deemed advancements, 340.
tenant in dower and by curtesy not affected by chap. 63, 340.
posthumous children, how considered, 340.
rules of, under ordinance of 1787, 773.
DESERTION,
wilful, when cause for divorce, 394.
DESTROYING,
unborn child, 682, 683.
DESTRUCTION OF WOLVES, 96.
DETAINERS, UNLAWFUL, 605 to 610.
(See *Forcible Entries and Unlawful Detainers.*)
DEVISE,
certain devises to vest no estate, but to be deemed powers, 319.
effect of power to devise the inheritance in certain cases, 321.
a power may be granted by, in will, 323.
how such will must be executed, 324.
power to, when to pass by will, 325.
of lands, who may make, 353.
construction of, 353.
beneficial to subscribing witness, when void, 354.
specific, when exempt from certain liabilities, 358.
when certain, exempt from payment of debts, 358.
when to hold subject to liability to contribute, 358.
(See *Wills*).
DEVISEES,
deceased, when issue of to take estate, 357.
when may commence proceedings to compel the conveyance of real estate, 386.
proceedings against, in certain cases, 554.
to what extent liable for debts of testator, 555.
how liable, when they have aliened real estate, 558.
DIES FOR COUNTERFEITING,
making or having in possession, punishment for, 699, 700.
DIPLOMAS,
regents of university may grant, 187.
medical societies may grant, 232, 233.
DISABILITIES,
certain, to pevent the operation of the limitation of actions in certain cases, 351.
ib., as to persons entitled to new trial in ejectment, 567.
(See *Limitations.*)
DISCONTINUANCE,
of highways, 168, 175.
of actions before justices, on plea or notice of title to lands, 450, 451.
judgment of, against plaintiff failing to declare, 503.
DISCHARGE,
of father of bastard child from imprisonment, 246.
of insolvent debtors, 647 to 651.
DISCHARGE,
of persons confined in jail on civil process, 652.
of convicts imprisoned for non-payment of fine, 738.
DISCOVERY,
bill for, after return of execution unsatisfied, 414.
by corporation and its officers, &c., may be compelled, 597.
DISFIGURING,
of persons, 686.
of animals, 694.
DISGUISING,
to obstruct execution of law, 703.
DISSEIZIN,
as to precedent estate, not to defeat expectant estate 316.
DISSOLUTION,
of plank and turnpike road companies, 285.
corporations to continue for three years after, for certain purposes, 308.
of village corporations, how made, 304, 305.
of marriage contract, as to both parties, by divorce from bond of matrimony, 398.
of corporations, by judgment upon information, 639.
DISTRICTS,
assembly, 40 to 43.
how to be bounded, 23.
congressional, 39.
senatorial, 40.
school, 34, 188.
(See *School Districts.*)
DISTRIBUTION,
of income of school fund, 34, 89, 205.
of statutes, 61, 62, 743.
of supreme court reports, 209.
of estates of deceased persons among those entitled, 362, 363.
of assets among creditors of deceased persons, 374, 375.
of estates of deceased persons among those entitled, 380 to 383.
of proceeds of sale on partition of lands, 578.
(See *Partition.*)
of the property of corporations, 595, 596.
of proceeds of property of insolvent debtors, 651.
DISTRICT ATTORNEYS,
when and how chosen and term of office, 28, 102.
duty of in cases of trespass on public lands, 696.
(See *Attorneys, District.*)
DISTURBANCE,
of religious meetings, punishment for, 709.
of the peace, 703, 704, 717 to 720.
DIVISION FENCES, 133 to 136.
(See *Fences.*)
DIVISION OF LANDS, 380 to 383.
(See *Partition.*)
DIVORCES,
legislature not to grant, 25.
what marriages void, without decree of divorce, 393.
when marriage void from the time its nullity is declared, 393.
when and how suit may be brought to annul marriage, 393, 394.
proceedings to affirm marriage, 394.
when marriage to be declared a nullity or void, 394.
sentence of imprisonment for life to dissolve marriage, 394.

- DIVORCES,
  - where and in what court divorce may be decreed, 394.
  - from bond of matrimony, for what causes may be decreed, 394.
  - ib. from bed and board, 395.
  - from bond of matrimony, when for same causes as from bed and board, 395.
  - when not to be granted, 395.
  - when may be denied though adultery established, 395.
  - wife may sue for, in her own name, 395.
  - defendant may answer, without oath, 395.
  - proceedings same as in suits in equity, 395.
  - husband to furnish money for wife to prosecute or defend, &c., 395.
  - court may prohibit husband from imposing restraint on liberty of wife, 396.
  - may make order concerning care and maintenance of children, &c., 396.
  - order in relation to children on final decree, 396.
  - court may revise and alter decree concerning children, 396.
  - when wife entitled to her real estate, 396.
  - restoration to wife of her personal estate, &c., 396.
  - court may appoint trustees to receive moneys decreed to wife, 396, 397.
  - court may further decree alimony, &c., 397.
  - when wife entitled to dower, 397.
  - when court may make allowance to wife from her estate, 397.
  - court may require security for the payment of alimony, &c., 397.
  - court may alter decree for alimony, &c., 397.
  - how court shall divide property, allow alimony, &c., 397.
  - on subsequent marriage, court may revoke decree of divorce, &c., 398.
  - court may decree support, though divorce from bed and board be not granted, 398.
  - decrees for divorce from bed and board may be revoked, 398.
  - decree from the bond of matrimony shall dissolve the marriage contract as to both parties, 398.
- DOCKET,
  - of justice of the peace, 443, 444.
  - when and how to be evidence, 527.
- DOCKETING,
  - judgments, on transcripts from justices' courts, 468, 469.
  - judgments in courts of record, 534 to 536.
  - after death of party, 535.
  - penalty on clerk for not docketing judgment, 536.
- DOCUMENTS,
  - certified by county officers, to be evidence, 114.
  - (See *Evidence.*)
- DODGE COUNTY,
  - boundaries of, 53.
- DOWER,
  - estates in, 333.
  - widow entitled to, 333.
  - in case of exchange of lands by husband, 333.
  - in mortgaged lands, 333.
  - widow not entitled to, in lands mortgaged to secure purchase money, 333.
  - when widow entitled to interest after sale on mortgage, 333.
  - when entitled to dower of residue after deducting amount paid on mortgage, 333.
  - in lands aliened by husband, how estimated, 333.
- DOWER,
  - when may be assigned by probate court, 334.
  - proceedings on such assignment, 334.
  - how assigned when estate consists of mill, &c., 334.
  - when widow entitled to, may occupy with heirs, 334.
  - how may be barred, 334, 335
  - election in case of jointure, 335.
  - ib. in case of provision by will, 335.
  - when widow deemed to have elected to take jointure, 335.
  - when to be endowed anew, 335.
  - woman being alien or residing out of state, 335.
  - woman endowed not to commit waste, 335.
  - liability for and to repair, &c., 335.
  - how long may occupy dwelling house and have sustenance, 335.
  - damages for withholding, 335, 336.
  - claim, when barred by assignment of, 336.
  - collusive recovery of, not to prejudice infant heirs, 336.
  - when reversion of, may be sold with real estate, 346.
  - when wife entitled to, on obtaining divorce, 397.
  - guardian may assign, 401.
  - gross sum in lieu of, may be accepted, 421.
  - release of, 421.
  - assignment of, after recovery in ejectment, 568, 569.
  - when estate in, may be sold in partition cases, 577.
  - satisfaction for, paid to person entitled, 576, 577.
- DRAIN,
  - when overseer of highways may cut, 169.
- DRAWING OF JURORS, 512.
  - (See *Jurors.*)
- DRIVERS,
  - of public carriages, to be discharged if guilty of intoxication, 248.
  - not to leave horses without fastening, 248.
  - (See *Carriages.*)
- DRUGGISTS,
  - selling poison, &c., without label, 711.
- DRUGS,
  - punishment for adulterating, 711.
  - physician prescribing while intoxicated, 711.
- DRUNKARDS, HABITUAL,
  - being cause for divorce, 394, 395.
  - appointment of guardians for, 400.
  - circuit judge to have care and custody of, 421.
  - proceedings in relation to their estates, 421 to 423.
- DRUNKENNESS,
  - of driver of public carriages to be cause of discharge, 248.
  - habitual, cause of divorce, 394, 395.
- DUELLING,
  - person engaged in, disqualified as an elector and from holding office, 36, 63, 685.
  - if he shall vote, how punished, 132.
  - person killing another in a duel to be guilty of murder, 685.
  - second, in like manner guilty, 685.
  - engaging in, challenging, &c., punishment for, 685.
  - accepting or carrying challenge, &c., 685.
  - posting another for not fighting, 686.
- DUPLICATE,
  - certificate of sale of school lands to be issued, 215, 216.

DUPLICATE,
  certificates of purchase of public lands to be evidence, 528.
DWELLING HOUSE,
  how long widow may remain in, without rent, 335.
  maliciously burning or setting fire to, 688.
  breaking and entering, with intent to commit crime, 689.
  larceny in, 690.
  destroying, by rioters, 705.
EARNEST,
  when necessary to validity of contract, 389.
EDUCATION, 33, 34, 188 to 205.
  of apprentices, 404, 405.
  expenses of, when to be defrayed from property of minor, 399.
EJECTMENT,
  action of. 562 to 569.
  allowed, 562.
  in what cases may be brought, 562.
  by whom; and against whom, 562.
  how commenced, 562.
  fictitious names, &c., abolished, 562.
  declaration in, 563.
  premises, how described, 563.
  plaintiff claiming undivided share, 563.
  to specify estate, 563.
  plaintiff, how named, 563.
  notice to be subjoined to declaration, 563.
  declaration, how served, 563.
  rule to plead, when not entered, 564.
  ib., when to be entered, 564.
  authority of attorney to commence action, 564.
  defendant, what to plead, 564.
  evidence, 564.
  consent rule abolished, 564.
  plaintiff to show right of possession, 564.
  not necessary to confess lease, entry &c., 564.
  actual ouster, when to be proved, 564.
  verdict in certain cases, 565.
  plaintiff to elect, if action against several, 565.
  how verdict to be rendered, 565.
  action not to abate by death, 565.
  judgment, what to be in certain cases, 566.
  plaintiff, when to have writ of possession, 566.
  form of writ, 566.
  execution for costs, how to issue, 566.
  judgment on verdict conclusive, 566.
  new trial to be granted, 566.
  when judgment by default conclusive, 566, 567.
  limitation of previous section, 567.
  possession not affected by vacation of judgment, 567.
  what may be shown in bar of recovery, 567.
  damages may be recovered, 567.
  proceedings to recover, 567.
  what defendant may plead, 567.
  issue of fact, how tried, 568.
  what plaintiff required to establish, 568.
  improvements may be set-off, 568.
  time to recover rents, &c., 568.
  writ of inquiry, when issued, 568.
  what plaintiff required to establish, 568.
  judgment, how rendered, 568.
  personal representatives may recover, 568.
  dower, how assigned to widow, 568.
  costs, 569.
  when not to be maintained by mortgagee, 569.
ELECTIONS,
  of senators and representatives in congress, 6, 77.
  writs of, governor may issue, 24.
  made by legislature, to be *viva voce*, 25.
  general, when to be held, 36, 64.
  first, how to be conducted, 39.
  special, when may be held, and how conducted, 64, 65.
  notifying of, 65.
  where held, 65.
  when and how, may be adjourned, 65.
  when notices and writs of, to be published, 66.
  special elections, &c., for county officers, to be ordered by sheriff, 66.
  writ of, what to specify, and to whom delivered, 66.
  inspectors of, who to be, 67.
  who to be chairman of election board, 67.
  when electors may choose, 67.
  clerks of, 67.
  when may be more than one poll of, 67.
  inspectors and clerks of, to be sworn, 67.
  when polls to be opened and closed, 67, 68.
  proclamation, when to be made, 68.
  vote to be by ballot, 68.
  names of all persons voted for, to be on one ballot, 68.
  challenge and proceedings thereon, 68.
  ballot box to be provided, 68.
  how ballot box to be kept, 69.
  inspectors may challenge and preserve order, 69.
  canvass, when made and how conducted, 69, 70.
  county canvass and proceedings thereon, 70, 71, 72.
  district canvass, 72, 73.
  state canvass, 73, 74, 75.
  civil process not to be served on day when held, 76.
  the person having highest number of votes to be deemed elected, 76.
  if informality in election, certificate shall be delivered to person having plurality of votes, 77.
  of electors of president and vice president, 77.
  of senators in congress, 78.
  penalties for violating laws in relation to, 131, 132, 133.
  militia not to be called out on day of, 132.
  of trustees of religious societies, 266, 267.
  how same conducted, 265 to 267.
  of trustees of cemetery associations, 269, to 271.
  of trustees of manufacturing corporations, &c., 287.
ELECTORS,
  of president and vice president, when and how chosen, 10, 64, 77.
  qualifications of, 22, 63.
  who disqualified from being, 23, 36, 63.
  votes for, how canvassed and determination certified, 75.
  special messenger may be appointed to notify, 75.
  when and where to convene, 77.
  vacancies, how filled, 77.
  compensation of, 78.
  at elections, who to be deemed qualified, 63.
  residing on Indian lands, where may vote, 37.
  to vote by ballot, 68.
  where to vote, 68.
  their powers at town meetings, 118, 119.

ELECTORS,
- penalties imposed on, for violating election laws, 131, 132.
- in school district meetings, 189.
- who qualified, at village elections, 292, 293.

EMBANKMENTS,
- of canal, punishment for malicious injury to, 695.

EMBEZZLEMENT,
- of effects of deceased person, 364.
- proceedings in case of, 367.
- ib., of property of ward, 402, 403.
- by officers, &c., of banks, 691.
- by officers, agents, clerks and servants, 691.
- by carriers, &c., 691.
- or fraudulent selling, by warehouseman, 692.
- of public moneys, 692.
- punishment therefor, 692.
- refusal to pay money lawfully demanded, 692.
- who deemed accessory, 692.
- officer need not pay in specie, when, 693.
- ib., to pay over same money received, 693.
- allegation in indictment for, 713.
- evidence of, 713.
- of funds, for improvement of Fox and Wisconsin rivers, to be felony, 770.

ENACTING CLAUSE,
- constitutional provision concerning, 24.
- may be omitted in Revised Statutes, 741.

ENCROACHMENT,
- on highways, proceedings how to remove, 181, 182.

ENGLISH LANGUAGE,
- writs, records, &c., to be in, 440.

ENROLLMENT,
- of decree in chancery, what to be deemed, 418.

ENTRY,
- forcible, 605 to 610.
  (See *Forcible Entries and Detainers.*)
- when entry on lands not deemed valid as a claim, 641.
- when may be made, in case of disability, 642, 643.
- when heir may make, 643.

ENUMERATION,
- of inhabitants of United States, 5.
- ib., of this state, legislature to provide for, 23.

EQUITY,
- how testimony taken in, 31.
- certain proceedings against corporations and their members may be in, 310.
- defective execution of powers may be decreed in, 325, 326.
- powers of courts of, to compel specific performance, 388.
- ib., to restrain corporations and appoint receivers in certain cases, 639.
  (See *Chancery, Court of.*)

ERRORS,
- in payment of taxes, when and how may be corrected, 163.
- in school district tax list, may be corrected, 201.
- when to be released before injunction issues, 427.

ERROR, WRITS OF,
- never to be prohibited, 21.
- in county courts, 436.
- proceedings on generally, 559, 560.
  (See *Writs of Error.*)

ESCAPE,
- what not to be deemed, 106.
- proceedings in case of, 538.

ESCAPE,
- from prison, punishing for attempt to aid, 701.
- punishment for aiding escape from officer, 702.
- suffering voluntary, 702.
- ib., negligent, and refusing to receive prisoner, 702.
- refusing to arrest, &c., 702.
- refusing to aid officers, 702.
- ib., justices of the peace, 702.
- from prison, penalty for, 738.

ESCHEATS,
- to the state, from defect of heirs, 33, 339.

ESTATES,
- in lands, enumeration of, 313.
- of inheritance, what to be termed, 313.
- when to be an absolute fee, 313.
- when persons entitled to an estate in fee tail shall hold an allodial estate, 313.
- conveyance by tenant in tail, to vest allodial estate in certain cases, 313, 314.
- *fee simple*, 313.
- *freeholds*, 314.
- *chattels real*, 314.
- *chattel interests*, 314.
- *estates for life of a third person*, when a freehold, 314.
- *estates in possession and expectancy*, definition of, 314.
- enumeration of estates in expectancy, 314.
- *future estates*, 314.
- when they are *remainders*, 314.
- *reversions*, 314.
- vested and contingent future estates, 314.
- void future estates, 314.
- when power of alienation of such estates suspended, 314.
- how long power of alienation may be suspended, 314.
- contingent remainder in fee, 315.
- limitation of successive estates for life, 315.
- remainder upon certain estates for life, 315.
- when remainder to take effect in certain cases, 315.
- contingent remainder on a term for years, 315.
- remainder of estates for life, how limited, 315.
- "heirs" and "issue," meaning of, in certain remainders, 315.
- limitations on chattels real, 315.
- remainders and future estates, how created, 315.
- two or more future estates, 315.
- certain future estates not to be void, 316.
- remainder upon a contingency, 316.
- heirs of tenant for life, when to take as purchasers, 316.
- construction of certain remainders, 316.
- rights of posthumous children in future estates, 316.
- when expectant estate not to be defeated, &c., 316.
- when may be defeated, 316.
- remainder not to be defeated in certain cases, 316.
- qualities of expectant estates. 316.
- *profits of lands*, future, how governed, &c., 316.
- accumulation of profits, by whom and in what manner directed, 316, 317.
- when directions for accumulations, void, 317.
- application of profits, &c., to support of infants, 317.
- who entitled to profits of land in certain cases, 317.

ESTATES,
- expectant estates, when created, 317.
- certain expectant estates abolished, 317.
- estates in severalty, joint tenancy, and in common, 317.
- certain grants to create estates in common, 317.
- nominal conditions annexed to grant, effect of, 317.
- *uses and trusts*, 318 to 321.
  - (See *Uses and Trusts.*)
- when estate of trustee to cease, 320.
- *powers*, 321 to 326.
  - (See *Powers.*)
- of tenant for life, &c., when changed into a fee, 321.
- *alienation of*, by deed, 326 to 331.
  - (See *Alienation.*)
- *in dower*, 333 to 336.
  - (See *Dower.*)
- *by the curtesy*, 336.
  - (See *Curtesy.*)
- *general provisions* concerning estates, 336.
- liability of person in possession of land out of which rent is reserved, and how recovered, 336.
- title to lands heretofore conveyed, not to be questioned on account of alienage, 337.
- *at will and by sufferance*, determination of, 337.
- in lands acquired after making will, how to pass, 353.
- of testator, liable for the payment of his debts, 357, 358.
- of deceased, liable on joint contract, 371.

ESTRAYS, 249 to 251.
- (See *Strays.*)

EVIDENCE,
- certified copies of laws, deeds, &c., to be, 82, 86, 90.
- certificates, &c., of notaries, to be, 90, 91.
- copies of papers, &c., certified by registers of deeds to be, 112.
- certificate of county surveyor to be, 112.
- copies of documents, &c., certified by county officers to be, 114.
- same, certified by town officers, 127.
- assessment roll and town treasurer's warrant to be, 155.
- tax deeds to be, prima facie, 162.
- assessment rolls, warrants and lists, &c., to be, 165.
- copy of bond to sell spirituous liquors to be, 242.
- necessary to sustain action against person selling spirituous liquors, 242.
- when examination relative to bastardy to be, 245.
- presumptive, what to be in prosecutions for altering marks on logs, timber, &c., 249.
- copy of chattel mortgage, how far to be, 255.
- when copy of articles of association of plank and turnpike road companies to be, 274.
- when book required to be kept by such companies to be, 282.
- certain book required to be kept by manufacturing corporations, &c., to be, 290.
- when conveyances, transcripts, &c., to be, 329.
- probate of a will, effect of as, 356.
- wills and copies, how made evidence, 358.
- intention to defraud, to be a question of fact, 390.
- certificates of marriage, &c., to be, 393.
- when answer in chancery not to be, 414.

EVIDENCE,
- attested copies of records and proceedings in probate courts to be, 429.
- depositions in probate courts may be, 429, 430.
- presumption in favor of order or decree of probate court, 430.
- in suits for forfeitures, special matter may be given in evidence under general issue, 560, 692.
- in action of ejectment, 564.
- answers of officers and agents of corporations, to be, 597.
- in actions for penalties, &c., under general issue, 560, 692.
- of right to costs in certain cases, 660.
- return of sheriff or constable to writ to be evidence of certain facts, 672, 673.
- in prosecutions for forging or counterfeiting, 698.
- *issuing and service of subpœnas and liability of witnesses thereon*, 516.
- who to issue subpœnas, 516.
- by whom and how served, 516.
- when witness not obliged to attend, 516.
- liability for failure to attend, 516.
- when court may issue attachment to bring up witness, 516.
- *taking the testimony of witnesses within this state*, 516.
- depositions may be taken to be used in cases other than criminal, 516.
- when may be taken, 516.
- notice to be issued by justice, 516.
- may be served on agent or attorney, 516.
- service on one of several parties sufficient, 517.
- how served and time given, 517.
- when notice need not be given, 517.
- deponent to be sworn and testimony to be in writing, 517.
- manner of examination, 517.
- deposition by whom written, and to be subscribed, 517.
- form of certificate to be annexed to deposition, 517.
- how same to be delivered to court and opened, 518.
- when not to be used, 518.
- what objections to deposition may be taken on trial, 518.
- when may be used in second suit for same cause, 518.
- on appeals, when may be used in court above, 518.
- courts may make rules respecting depositions, 518.
- when and how witness may be compelled to give his deposition, 518.
- *taking the testimony of witnesses out of this state*, 518.
- deposition of such witnesses, how may be taken and used, 518.
- to be taken on written interrogatories, 519.
- court may make rules for taking same, 519.
- when certain depositions and affidavits taken out of state may be admitted, 519.
- *proceedings to perpetuate testimony of witnesses within this state*, 519.
- notice to be given, 519.
- deposition, how taken and certified, 519.
- to be recorded, and when and where, 519.
- when and how may be used, 519, 520.
- how witnesses compelled to give such depositions, 520.
- *proceedings to perpetuate testimony of witnesses out of this state*, 520.
- notice to be given, 520.

EVIDENCE,
when court to issue commission, 520.
how deposition to be taken and returned, 520.
person applying may file statement in clerk's office in vacation, 520.
supreme court may make rules respecting same, 520. 521.
how such depositions may be used, 521.
proceedings to perpetuate the testimony of witnesses within and without this state, as against all persons, 521.
how depositions in such cases to be taken, 521.
publication of notice, &c., 521.
deposition to be recorded, and when and where, 521.
when and by whom may be used, 521.
depositions taken in this state to be used in courts of other states and countries, 522.
how witness may be summoned and compelled to give his deposition, 522.
before whom such deposition may be taken, 522.
competency of certain persons as witnesses, 522.
members of certain corporations not incapacitated as witnesses, 522.
surety in suit, &c., how may be discharged and sworn, 522.
persons guilty of crime not incompetent unless convicted, 522.
printed statutes of this state, and records and proceedings of courts and laws of other states, &c., as evidence, 522.
when records of courts of other states to be, 522.
when printed statutes, &c., of this state to be, 522.
ib. of other states, &c., 523.
common law of other states, how proved, 523.
foreign laws how proved, 523.
swearing of the opposite party as a witness, 523.
either party may give notice to adverse party to be sworn, &c., 523.
when party receiving notice may have his deposition taken, 523.
when may be taken on commission, 523.
when party may be examined on his own behalf, 523.
ib. of adverse party, 523.
exemplification of justices' judgments in other states, 523, 524.
how certified, 524.
effect of as evidence, 524.
documentary evidence and the preservation thereof, &c., 524.
proof of publication of certain notices, 524.
when and where same filed, 524.
certain affidavits and copies thereof to be, 524.
how copies of affidavits, records, &c., to be certified, 524.
when seal of court need not be affixed thereto, 524.
certain written instruments may be acknowledged and read in, 525.
register of deeds and clerk of court to receive and deposit papers, 525.
how same indorsed and kept, 525.
how withdrawn, &c., 525.
open to examination, 525.
when certificate of officer to be evidence of loss of document, &c., 525.
privilege of witnesses in certain cases, 525.
when witness not to be excused from answering question, 525.
when shall be. 525.

EVIDENCE,
when physician, &c., not to be compelled to disclose as a witness, 526.
loss of instruments and proceedings thereon, 526.
proof of loss of instrument how rebutted, 526.
party may recover on lost note, &c., 526.
bond to be executed to adverse party, 526.
certain testimony relative to corporations, 526.
when admissions of members of corporation not evidence, 526.
when member of a corporation may testify, 526.
account books, instruments and justices' dockets as evidence, 526.
account books evidence, 526, 527.
when to be verified by oath of agent, &c., 527.
when ledger produced, 527.
entries by deceased persons, 527.
instrument purporting to have been signed to be evidence, 527.
justices' docket or transcript thereof to be evidence before him, 527.
transcript from justices' docket to be evidence in same county, 527.
clerk's certificate attached necessary when used in different county, 527.
what proceedings before justice, &c., may be proved by his oath, &c., 528.
effect of certain allegations in pleadings, 528.
when allegation that plaintiffs or defendants were partners, &c., to be taken as true, 528.
when proof of joint liability of defendants on contract not necessary, 528.
miscellaneous provisions, 528.
possession of note, &c , to be evidence of indorsement, 528.
certain notices may be given by or to agents or attorneys, 528.
depositions to be used before justices, how taken out of state, 528.
registers' and receivers' certificates to be evidence, 528, 529.
ib. of recorded deeds, &c., of lands in state, if acknowledged out of state, 529.

EXAMINATION,
of prisoners, 721 to 723.
(See *Prisoners*.)

EXCEPTIONS,
to answer in chancery, 416.
in county courts, 436, 437.
how taken and signed, 560.
in criminal cases when to be allowed, 728, 729.
accused to recognize in case of, 729.

EXCESSIVE BAIL,
shall not be required, 17, 19.

EXCUSABLE HOMICIDE, 683.

EXCHANGE, BILLS OF, 262.
(See *Bills of Exchange and Promissory Notes*.)

EXECUTIVE POWER,
of *United States*, where vested. 10, 11.
of *this state*, vested in governor, 26.

EXECUTIVE DEPARTMENT,
of the state, 26, 27.
appropriation to defray contingent expenses of, 81.
secretary of state to keep record of official acts of, 27, 81.

EXECUTION,
of trusts, when to devolve on court of chancery, 320.
of powers, when to be decreed by court of chancery, 323.
of powers in other cases, 324 to 326.
of deeds within this state, 327.

EXECUTION,
of deeds in other states, 327.
ib. in foreign countries, 327.
of deeds by married women out of this state, 328.
of conveyances, acknowledgment and proof of, 327, 328.
of wills, 353.
of judgments in criminal cases, 729 to 731.
EXECUTIONS,
when not to issue on judgment which county should pay, 95.
property of cemetery associations exempt from, 271.
how issued on judgments against road companies and stockholders in same, 283.
how executed against certain corporations, 308, 309.
for costs, when awarded against executor, &c., 379.
on decree on foreclosure of mortgage, 423.
for costs in proceedings in probate courts, 432.
in replevin, in justices' courts, 465.
in general, in justices' courts, 469.
form of, in justices' courts, 470, 471, 490.
executions and proceedings thereon, 537 to 540.
party to have, within two years, 537.
how to issue after two years, 537.
against what to issue, 537, 538.
when not to issue against body, or executors, 538.
when to issue against body, where bail was taken, 538.
when against body, where defendant is imprisoned, 538.
may issue to sheriffs of different counties, &c., 538.
when body taken on, no other to issue, 538.
proceedings in case of escape, 538.
person arrested to be kept in custody, 538.
same of person surrendered by bail, 538.
when officer may require bond of indemnity, 538.
if process served on part of joint debtors, judgment to be against all, 538.
force and effect of such judgment, 539.
how execution to issue thereon, 539.
how served and collected, 539.
interest, when to be collected, 539.
sheriff to indorse time he received, 539.
against sheriff, to whom directed, 539.
person receiving, to be deemed coroner, 539
when personal property bound by, 539.
coin levied on, need not be sold, 539.
bank bills may be levied on and sold, 539.
right of pledgor of property may be sold, 540.
notice of sale, how given, 540.
exemption of property from, 540, 541.
what real estate not subject to sale on, 540.
exemption not to affect laborers' &c. lien, 540.
not to extend to mortgage, 540.
proceedings when levy is made before homestead set apart, 540.
officer may sell property levied upon and not included in set off, 540, 541.
dwelling house on leased land, exemption of, 541.
real estate not exempt from sale for taxes, 541.
what personal property exempt from attachment, and levy and sale on final process, 541.
exempted property to be chosen by debtor,
proceedings on sale and redemption, &c., 541 to 551.
EXECUTIONS,
personal property to be present when sold, 551.
shares of stock, how levied upon or attached, 541.
how to be sold, 542.
person keeping record of shares to give officer certificate, &c, 542.
penalty for neglect, 542.
what execution to command officer, 542,
when issued against terretenant, 542.
trust estates, how liable on, 542.
suspended one year on death of defendant, 542.
party in custody dying, new execution may issue, 542.
on what real estate not to be levied, 543.
when equity of redemption not to be sold, 543.
what attorney to indorse on such execution, 543.
sheriff's return of same, 543.
advertisement of sale of real estate on execution, 543.
real estate sold to be described, 543.
sale to be public, and when to take place, 543.
penalty on officer for making irregular sale, 543.
lots, &c., to be sold separately, 543.
penalty for taking down or defacing nonotice, 544.
omission to give notice, &c., not to affect sale, 544.
officer not to purchase at sale, 544.
certificates of sale and contents, 544.
to whom to be delivered, 544.
when to be evidence, 544.
real estate may be redeemed within two years, 544.
by whom redeemed, 544, 545.
when certificate of sale void, 545.
interest vested in purchaser may be acquired by other persons, 545.
how judgment creditor may acquire interest of purchaser, 545.
when and how other creditors may acquire interest of first creditor, 546.
ib. of second creditor, 546.
purchaser being creditor may acquire title, 546.
when plaintiff may acquire title, 546.
to whom money to be paid, &c., 547.
creditor to present purchaser, &c., evidence of his right, 547.
when title of defendant divested, 547.
from what time grantee deemed vested with legal title, 547.
when officer to execute conveyance, and effect of same, 547.
when to be made to executor, 547.
estate to be held in trust for heirs, &c., 548.
proceedings, if sheriff die, &c., before execution satisfied or conveyance made, 548.
ib. if no under sheriff, 548.
to whom payment made in case of death, &c., of sheriff, 548.
when purchaser evicted, &c., may recover purchase money, &c., 548.
when party may have new execution; effect of same, &c., 548.
when joint defendants may compel contribution, 549.
how lands liable to contribute, 549.
original judgment to remain a lien to compel contribution, 549.
when not, 549.

EXECUTIONS,
  entry to be made by clerk, 549.
  his fees, 549.
  mortgagees, &c., may acquire interest of purchaser, 549.
  to leave purchaser, &c., evidence of his right, 550.
  officer to execute deed, 550.
  claim of attachment may be inserted in execution, 550.
  officer to notify defendant and garnishees, 550.
  powers of court and proceedings on return of writ, 550, 551.
  on judgment to abate nuisance, 583.
  shall not be avoided by means of any feigned recovery, 584, 585.
  for costs, &c., may be included in writ of possession, 586.
  in suits by attachment, 590.
  in suits against boats and vessels, 604.
  in replevin, 614, 615.
EXECUTOR,
  within what time to present will to probate court, 355.
  within what time to signify to court his acceptance of the trust, &c., 355.
  liability of, for neglect to present will, or notify court of refusal, &c., to serve, 355.
  when may retain estate until assigned by order of probate court, 358.
  construction of "executor," as used in chap. 66, &c., 359.
  when letters testamentary to issue to, 360.
  bond to be given by, 360.
  bond in case executor is residuary legatee, 361.
  effect of neglect to give bond, 361.
  refusing to accept, to whom letters to issue, 361.
  administration in case of minority, 361.
  marriage of executrix, effect of, 361.
  when may be removed, 361.
  when remaining, may execute trust, 361.
  when all not authorised, those authorized may execute will, 362.
  of executor, not to administer estate of first testator, 362.
  separate or joint bonds may be taken from, 362.
  powers of, on revocation of letters of administration after proof of will, 365.
  acts of, before revocation, valid, 365.
EXECUTORS AND ADMINISTRATORS,
  personal property held by, where taxable, 140.
  holding stock in manufacturing corporations, &c., not personally liable, 288.
  powers and duties of, in relation to sale of real estate, for payment of debts and legacies, 344 to 352.
  (See *Sale of lands by executors, administrators and guardians.*)
  liable for neglect, misconduct or fraud, in certain cases, 352.
  duties of, in relation to making and returning inventory, 366.
  when may sell real estate for payment of debts, 367.
  to have possession of all the real and personal property, &c., until estate settled, 367.
  proceedings by, in case of suspected embezzlement, 367.
  when to compound with debtors, 367.
  powers and duties in relation to mortgages, 368.

EXECUTORS AND ADMINISTRATORS,
  for whom to be seized when premises bid in on mortgage sale, &c., 368.
  real estate purchased by, may be sold under license, 368.
  if not sold, how assigned and distributed, 368.
  when to prosecute suits for recovery of lands, &c., fraudulently conveyed by deceased, 368.
  disposition of estate so recovered, 369.
  when no suit to be commenced against, except ejectment, &c., 371.
  actions pending to be prosecuted against, 371.
  not prevented from bringing suits, 371.
  set-offs in suits by, 371.
  may appeal from decision of commissioners, 372.
  time for paying debts and legacies by, 373.
  extension of time, 373.
  when to pay debts in full, 374.
  in what order to pay debts, 374.
  when to pay dividend, 374.
  when personally liable to creditor, 375.
  payment of contingent claims by, 376.
  defence by, to action for recovery of such claim, 376.
  actions against, if appointment of commissioners omitted, 377.
  actions not to be prosecuted against, except in cases expressly provided for, 377.
  rendering accounts by, 378, 379.
  what to be chargable with, 378.
  how to account for personal estate, 378.
  not to profit by increase, or lose by destruction, without their fault, 378.
  when and how to sell personal estate, 378.
  to account for proceeds of sale, 378.
  when not accountable for debts due deceased, 378.
  to account for income of real estate, 378.
  accountable for loss occasioned by neglect, 378, 379.
  when accounts of, to be rendered, 379.
  compensation of, 379.
  bonds of, may be put in suit on neglect to render account, 379.
  execution against for costs, 379.
  notice of examining accounts, 379.
  when suit may be brought by creditor on bond of, 383.
  when suit on bond may be brought by next of kin, 383.
  when others may be authorized to bring suits on bond, 383.
  when judge of probate to cause bond to be put in suit, 383, 384.
  suits on bonds of, to be in name of judge of probate, 384.
  when judge of probate may grant permission to sue on bond, 384.
  judgment in suit for benefit of particular persons, 384.
  judgment, &c., in other cases, 384.
  disposition of moneys collected, 384.
  when scire facias may be prosecuted on judgment, 384.
  who may prosecute on bond in certain cases, 384.
  conveyance of real estate by, in certain cases, 385.
  when court may decree conveyance by, 385.
  notice of petition and hearing, 385.
  examination of petitioner, 385.
  when decree for conveyance to be made, 385.
  appeal from decree, 385.
  when petition to be dismissed, 385.

EXECUTORS AND ADMINISTRATORS,
bills in chancery for specific performance, 386.
who may be required to join in conveyance, 386.
effect of conveyance, 386.
copy of decree to be recorded, 386.
how decree enforced, 386.
proceedings in case of death of person entitled to conveyance, 386.
set-offs by and against, to be allowed, 506.
to prosecute or defend suits of testator, &c., 509.
judgment against in case of default, 509.
suits and proceedings by and against, 551 to 554.
when actions for tort may be brought by and against, 551.
limitation of preceding, 551.
when not to be held to bail, 551.
how held to bail in action for waste, 551.
judgments and executions against, 551.
judgment by default not to be deemed evidence of assets, 552.
may all be brought into court, 552.
what not to be deemed part of time for commencement of actions against, 552.
same as to commencement of actions by, 552.
not liable for pleading false plea, 552.
of executor, not to act on estate of first testator, 552.
real estate of deceased not bound by judgment against executor, 552.
when subsequent executors, &c., may have execution, &c., 552.
in actions against, when inventory may be rebutted, 552.
when not to be charged with demands inventoried, 552, 553.
construction of preceding sections, 553.
no person liable as executor in his own wrong, but shall be sued as a wrong doer, 553.
administrators de bonis non may prosecute and defend suits commenced by and against predecessors, 553.
referees to be appointed in suits by legatees, 553.
how to proceed, 553.
costs, how to be paid, 553.
when legatee may have new action, 553.
what goods and money not assets, 553, 554.
their fees, 667.
EXEMPTION,
of property from seizure or sale for debt, 21.
from taxation, 138, 139, 234.
of property from execution, &c., 540, 541. (See *Execution.*)
EXONERATION OF BAIL, 500.
EXHIBITIONS, PUBLIC,
license for, how granted, 247.
EXPECTANCY,
estates in, definition of, 314.
enumeration of, 314.
not to be defeated by certain acts, 316.
when may be defeated, 316.
qualities of, 316.
when created, 317.
certain, abolished, 317.
EX POST FACTO LAW,
not to be passed, 9, 20.
EXTORTION,
of fees, prohibited, 677.
attempts to extort money by threats, &c., 687.
EXTREME CRUELTY,
cause for divorce, 395.
FACT,
fraudulent intent, to be a question of, 390.
and law, when jury shall determine, 712.
FALSE IMPRISONMENT,
limitation of actions for, 643.
in action for, when no more costs than damages recoverable, 655.
FALSE INVOICE,
punishment for making out or exhibiting, 694.
FALSE PERSONATING ANOTHER,
punishment for, 693.
FALSE PROTESTS,
making or procuring, punishment for, 694.
FALSE RECEIPT,
punishment for making, 693.
FALSE TOKENS AND PRETENCES,
obtaining property by, 693.
FATHER,
of pauper, bound to support him, 236, 237.
of bastard child, proceedings against for support of, 244 to 246.
to give bonds, 244, 245.
when may be imprisoned, 245.
when and how may be discharged, 246.
when estate of child shall descend to, 338.
may consent to binding out, 404.
FARO,
punishment for playing, 706.
FEE SIMPLE,
what to be, 313.
estate of tenant for life, &c., when changed into, 321.
certain powers create, 321.
FEES OF OFFICERS,
penalty for demanding or receiving greater than allowed by law, 107.
of county treasurer, 110.
of county surveyors, 112, 113.
of chainmen and markers, 113.
of fence veiwers, 137.
of town treasurer, 151, 155.
to be paid officers, &c., for services under tax law, 165, 166.
of publication, when to be apportioned, 166.
of overseers of highways, 173.
of justice and jurors, for appraising damages in laying out roads, 177.
of officers and witnesses in proceedings for removing encroachments, 182.
of town superintendents, 197.
of secretary and treasurer, on sale of school lands, 219.
of commissioners appraising lands, 221.
of justices for appraisal of strays, 250.
for services in disposal of unclaimed property, 254.
of constables for same, 254.
of town clerk for services in relation to marks and brands and chattel morgages, 255.
of surveyor and register in relation to town plots, 259.
of county treasurer as sealer, 261.
of commissioners to appraise damages for lands taken by road companies, 278.
of judges and justices for services performed relative to plank and turnpike roads, 284.
on advertisement and sale of village lots for taxes, 302.
of clerk of circuit court in relation to marriage licenses, 392.
when judge, &c., not to receive, 441.
of witnesses, to be paid or tendered in advance, 516.
of commissioners to make partition, 574.

FEES OF OFFICERS,
of register and appraiser in proceedings by attachment, 589.
of garnishees, judgment for, 592.
of officers in suits against boats and vessels, 605.
when to be taxed, 659.
when not to be collected until taxed, 659.
of certain officers and general provisions relative to, 660 to 679.
of clerks of circuit court, 661.
of clerk of supreme court, 662.
of commissioners to take testimony, 663.
of judge of probate as court commissioner, 663.
ib., acting as judge of probate, 665.
of county judge, 666.
of executors and administrators, 667.
of witnesses, 667.
of sheriffs, 668.
of coroners 670.
of constables, 670.
of notaries public, 671.
of justices of the peace, 671.
in justices' courts, 672.
for travel of witnesses in same to be proven, 672.
for travel in serving subpœna when to be proved, 672.
to be allowed for only two witnesses for each fact, 672.
when to be apportioned, 672.
when not allowed for copies, depositions, &c., 672.
when for disbursements not allowed, 672.
justice may hear evidence to disprove charges and services, 672.
of constable for attending trial before justice, 673.
of registers of deeds, 673.
of appraisers, commissioners, &c., 673.
of jurors, 673.
to be paid by plaintiff in circuit court on swearing jury, 674.
of clerk of county court, 674.
of witnesses and jurors in county courts, 674.
of sheriffs and constables in same, 674.
in office of secretary of state, 674.
allowed party recovering in law, 674.
ib., recovering in chancery, 675.
for publishing insolent notices, 676.
for publishing other notices, 676.
officer to set up table of his fees, 676, 677.
chap. 131 not to apply to special cases, 677.
not allowed for certain searches and copies, 677.
greater than allowed by law, not to be received, 677.
not to be received unless service actually rendered, 677.
not to be taxed for services not actually rendered, 677.
prospective, when allowed, 677.
allowance for one draft only, 677.
what not to be computed part of draft, 678.
fees paid for certified copies allowed, 678.
when attorneys, &c., not allowed fees as witnesses, 678.
officer receiving, to give receipt in items, 678.
for administering oath of office, 678.
allowed one officer, to be allowed another for same services, 678.
when poor and foreign witnesses to be paid out of county treasury, 678.
when fees of prosecution in name of state to be paid out of county treasury, 678.

FEES OF OFFICERS,
when need not be tendered to witnesses on behalf of state, 678.
witness not entitled to in criminal prosecutions, 724.
person acquitted not liable for, 727.
(See *Costs.*)

FEIGNED ISSUE,
in actions for waste, 583.
(See *Issue.*)

FEIGNED RECOVERIES,
by whom may be falsified, 584, 585.

FELONIES,
person convicted of, disqualified to vote, 23, 63.
if he shall vote, how punished, 132.
accessory to, 711, 712.
definition of, 713.
persons indicted for, to be present at trial, 727.
embezzlement of certain funds to be felony, 770.
(See *Crimes.*)

FEMALES,
marriage of, extinguishes authority as executrix, &c., 361.
under eighteen, may be bound apprentices, 404.
not to be imprisoned on civil process from justices' courts, 473.
killing unborn child by injury to, 683.
attempt to procure miscarriage of, 683, 684.
in prison, to be kept separate from males, 736

FENCES,
what to be deemed legal fence, 133.
partition, by whom maintained, 133, 134.
proceedings in case of neglect to repair, &c., 134.
remedy of complainant for repairs, &c., 134.
proceedings in case of controversy in relation to, 134.
when party entitled to recover double the value of fence erected, 134.
division of fences recorded to be valid, 134.
when occupant to pay for portion of fence assigned to him, 134.
to be kept in repair throughout the year, &c., 135.
proceedings when land bounded by river, &c., and parties disagree, 135.
how divided when lands have been occupied in common, 135.
when viewers may assign time for making, 135.
if party neglect to make his share, when other party may recover double the value, 135.
when not to be removed if occupant, &c., will pay value of, 135, 136.
when occupant, &c., to pay for one half of, 136.
proceedings when fence on boundary line of towns, 136.
fences running into water, 136.
when line of unimproved lands divided, who to erect fences, &c., 136.
notice on determination not to improve lands, 136.
who to build and repair on private roads, 178.
when to be removed in opening highways, 179.
when, if they are encroachments, 182.
owner or occupant of lands on highways, how may cultivate live fences and hedges along same. 256.

FENCES,
- penalty for injuring same, or fences inclosing orchards, &c., 256, 257.
- injury to fences inclosing cemetery, a misdemeanor, 271.
- to be kept in repair by tenant in dower, 335.

FENCE VIEWERS,
- duties of, in relation to partition fences, 134, 135, 136.
- overseer of highways to be, 136.
- penalty for neglect to view fence, &c., 136.
- compensation of, 137.

FERRIES,
- county supervisors may grant licenses for, 96, 184.
- licenses not to exceed three years except across certain rivers, 184.
- rates of ferriage to be fixed, and may be altered, 184.
- when license to be granted only to owner of land, 184.
- if other person apply, notice to be given, 184, 185.
- bond to be given, 185.
- license to be entered by clerk, 185.
- penalty for neglect, or demanding too much ferriage, 185.
- penalty for keeping unless authorized, 185.
- when waters divide two counties, &c., 185.
- list of rates of ferriage to be furnished, and same to be posted, 185.
- privileges specially granted by law, not to be affected by general provisions, 185.

FICTITIOUS NAME,
- when defendant may be sued by, 445, 495
- of parties, &c., in ejectment abolished, 562.
- affixing to instruments, &c., how punished, 699.

FIGURES,
- may be used in assessment roll, &c., 141.
- ib. in writs, records, &c., 440.
- to be counted in computing folios, 677.

FILING,
- chattel mortgages, 254, 255.
- copy of deed, effect of, 328, 329.

FINANCE,
- article on, 32.
- (See *Taxes.*)

FINES AND FORFEITURES,
- excessive fines not to be imposed, 17, 19.
- fines reserved in grants of land void, 20.
- accruing to territory, to inure to state, 38.
- when duplicate receipts to be given for moneys paid for, 103.
- when to be paid over by district attorney, 103.
- same by county treasurer, 109.
- when to be sued for and collected by town supervisors, 126.
- imposed on officers neglecting to perform duties required by tax law, 165.
- on county treasurer, for failure to pay moneys into state treasury, 165.
- on town treasurer for false return, &c., 164.
- on officers for not keeping distinct fund separate, 165.
- on overseer of highways for neglect or refusal to perform duties, 170, 174.
- for obstructing highways or ditches, 180, 181.
- for encroachments, 181.
- for neglect to remove trees fallen into highway, 182.
- for falling tree into highway, 182.
- for obstructing navigable streams, 182.
- for riding on a bridge faster than a walk, 183.

FINES AND FORFEITURES,
- for injuring trees planted on side of highways, 183, 184.
- for injuring or removing mile-stone or guide-board, 184.
- for injuring roads and bridges, 184.
- on keeper of ferry for neglect of duty, or demanding too much ferriage. 185.
- for keeping ferry without authority, 185.
- on treasurer of school district, for loss of school moneys by neglect, 192.
- on officers and inhabitants of school districts for neglect of duty, 204.
- on town superintendent, for neglect to make report, 204.
- on clerk of supervisors for same, 204, 205.
- on clerk of school district, for making false report and not delivering books, 205.
- on purchaser of school lands for not making first payment, 212.
- for trespasses on school lands, to be paid into state treasury, 225.
- for removing pauper without authority, 239.
- for bringing same into state, 240.
- for selling or giving away spirituous liquors without executing bond, 243.
- for selling or giving same to indians, 243.
- on certain officers for not enforcing act relative to selling liquors to indians, 244.
- for violating the law relative to roads and carriages, 247, 248.
- for altering or destroying marks on logs, timber, &c., 249.
- for converting same when floating, &c., 249.
- for taking away stray without consent of finder, 251.
- on finder of lost money or goods, for neglect to give notice of same, 252.
- for injury to hedges, fences, fruit trees, &c., 257.
- when same collected, where paid, 257.
- for breach of law in relation to rates of toll for grinding, 262.
- for breach of law in regard to manufacturing corporations, &c., 290.
- board of trustees of villages may impose and remit, 296.
- for breach of law in relation to telegraph lines, 306, 307.
- ib. in relation to marriage, 392, 393.
- for contempts in justices' courts, 479.
- amount of, for assault and battery, 487.
- defendant to be committed till paid, 488.
- to be paid to justice, 488.
- ib. to sheriff, 488.
- district attorney to prosecute for, 489.
- for contempts and misconduct in courts of record, 439, 601.
- of witnesses, for non-attendance, 516, 608.
- certain, to be paid to county treasurer, 608.
- proceedings to collect, 622, 623.
- for usurping or intruding into office, &c., 639.
- for not obeying mandamus, 635.
- moneys collected on, when and where to be paid, 693.
- for selling obscene books, 709.
- for violating sepulchre, 709.
- for mutilating tombs, monuments, &c., 710.
- for making roads through burial grounds, 710.
- for cruelty to animals, 710.
- for selling unwholesome provisions, 711.
- for adulterating food, liquors, &c., 711.
- for adulterating drugs and medicines, 711.

FINES AND FORFEITURES,
for prescribing medicine while intoxicated, 711.
for selling arsenic, &c., without labeling, 711.
may be recovered by indictment, 713.
same before justices of the peace, 713.
for violating law relative to prisons, 736, 738.
poor convict, confined for, how discharged, 738.
(See *Penalties and Forfeitures.*)
FIRING WOODS AND PRAIRIES,
punishment for, 697.
FOLIO,
definition of, 60, 677.
FOND DU LAC COUNTY,
boundaries of, 53.
FOOD,
mingling poison with, with intent to kill, 667, 668.
punishment for adulterating, 711.
wholesome, to be furnished prisoners, 736.
FORCIBLE ENTRIES AND DETAINERS,
when occupant of school land liable to action for, 225.
forcible entry forbidden, 605.
justice of the peace may inquire into, and cause restitution to be made, 605.
proceedings on complaint, 605.
summons, how served and returned, 606.
proceedings on return of summons, 606.
how same to be issued and served when defendant is absent from county, 606.
adjournment, 606.
depositions, how taken, 606.
judgment upon finding, 607.
new summons, if jury cannot agree, 607.
when complainant to recover treble damages, 607.
limitation of certain provisions, 607.
proceedings against lessee holding over, not paying rent, &c. 607, 608.
treble damages, when recoverable, 608.
penalty on jurors and witnesses, 608.
fines, where paid, 608.
defendant may be committed, 608.
appeals, when and how taken, 608.
effect of appeal, &c., 608.
proceedings, if writ of restitution has been issued, 608.
when same not to be dismissed for want of form, 608.
amendment, 609.
matters in justification to be pleaded, or notice given, 609.
court may compel return or amendment, 609.
forms of process and verdict, 609, 610.
ib. of writ of restitution, 609, 610.
FORECLOSURE OF MORTGAGES,
in chancery, 423 to 425.
by advertisement, 619 to 622.
taxing costs of 660.
(See *Mortgages.*)
FOREIGN BILLS OF EXCHANGE,
damages on protest of, 263.
FOREIGN CORPORATIONS,
may sue in this state, 593.
attachment against, 593.
when to recover double costs, 593, 594.
FOREIGN CRIMINALS,
may be delivered over by governor, 715, 716.
proceedings therefor, 716.
act of congress relative to, 798, 799.
FOREIGN EXECUTORS, ADMINISTRATORS AND GUARDIANS,
when may be licensed to sell lands for payment of debts and legacies, &c., 349, 350.
when to execute bond, 349, 350.
FOREMAN,
of grand jury, court to appoint, 512.
his powers and duties, 513.
FORFEITURES,
of estate, conviction not to work, 20.
in actions for, general issue may be pleaded and special matter given in evidence, 560.
of property to people of state, proceedings in, 639.
(See *Fines and Forfeitures, and Penalties and Forfeitures.*
FORGERY AND COUNTERFEITING,
of records, deeds, contracts, &c., punishment for, 697.
uttering false record or contracts, 697.
of notes, &c., issued by state, 697.
of bank notes, 697.
having counterfeit bills with intent to pass, 698.
passing counterfeit bills, 698.
making or having tools, &c., with intent, &c., 698.
testimony of president, &c., of bank, when dispensed with, 698.
sworn certificate of certain officers made evidence, 698.
connecting parts of genuine instruments, 699.
affixing fictitious signatures, 699.
intent to defraud, statement and proof thereof, 699.
counterfeiting coin, 699.
having ten pieces with intent, &c, 699.
having less than ten with intent, &c., 699.
making, &c., tools for coining. 699.
punishment on conviction of second offence, 700.
FORMER ACQUITTAL, 16, 20.
when a bar to subseqent prosecution, 682.
FORNICATION,
punishment for, 708.
FOX AND WISCONSIN RIVERS,
an act for improvement of, 765.
(See *Improvement of Fox and Wisconsin Rivers*)
FRANCHISE,
of corporation, liable to be sold on execution, 308, 309.
rights of purchasers at such sales, 309.
how may be redeemed, 309.
FRAUD,
instruments in execution of a power, may be affected by, 325.
liability of executor, &c., for, in sale of lands, 352.
defendant shall answer bill charging him with, 418, 419.
gross fraud at common law, how punished, 693.
FRAUDULENT CONVEYANCES AND CONTRACTS,
of lands by deceased person, when executor, &c., to prosecute for recovery of, 368.
relative to lands, 387, 388.
fraudulent conveyances of, void, 387.
what not deemed fraudulent, 387.
conveyances with power of revocation at will of grantor, void, 387.
conveyance executed by person to whom revocation given, valid, 387.
conveyance, &c., of land, to be in writing, 388.

- FRAUDULENT CONVEYANCES AND CONTRACTS.
  - qualification of same, 388.
  - what contracts and leases void, unless in writing, 388.
  - agent may sign instrument, 388.
  - powers of courts of equity to compel specific performance, not abridged, 388.
  - *relative to goods, chattels, &c.*, 388, 389.
  - when conveyances of personal property, void, 388.
  - what agreements void unless in writing, 388.
  - for sale of goods over $50, how made to be valid, 388.
  - memorandum of auctioneer to be deemed, &c., 389.
  - sale fraudulent, unless vendee takes possession, 389.
  - "creditors," who to include, 389.
  - excepted cases, 389.
  - agent may subscribe instrument, 389.
  - when mortgage of personal property valid, 389.
  - *general provisions*, 390.
  - conveyances, judgments, &c., to delay creditors, &c., void, 390.
  - grants, &c., of trusts to be in writing, 390.
  - conveyances void as to creditors, void as to heirs, 390.
  - intention to defraud, to be question of fact, &c., 390.
  - when purchaser without notice, protected, 390.
  - what "lands," &c., to include, 390.
  - what "conveyance" to include, 390.
- FRAUDULENT DISPOSAL OF PROPERTY,
  - by officers, &c., of banks, 691.
  - by officer, &c., of incorporated company, &c., 691.
  - by warehousemen, &c., 692.
- FRAUDULENT RECEIPTS,
  - making of by warehousemen, &c., 693.
- FRAUDULENT RECOVERIES,
  - not to affect certain parties, 584, 585.
- FREEDOM OF SPEECH, 16, 19, 24.
- FREEHOLD,
  - what to be, 314.
- FREEHOLDERS,
  - six may apply for laying out road, 175.
  - five to be summoned to appraise damages for laying out road, 176.
  - to be summoned on appeal for laying out road, &c., 178.
  - ib. in case of encroachment, 181.
- FRUIT, STANDARD MEASURE OF, 201.
- FRUIT TREES,
  - punishment for injury to, 257, 695.
- FUGITIVES,
  - from justice, to be delivered up on demand of executive, 13.
  - governor may appoint agents to demand, 715.
  - expenses, how paid, 715.
  - proceedings on demand of fugitives from other states, 715.
  - warrant, when and how issued, and what to contain, 716.
  - when to give recognizance, 716.
  - when committed, 716.
  - forfeiture of recognizance, 716.
  - to be committed if charged with capital offence, 716.
  - when discharged, 716.
  - may be delivered on warrant of executive, 716.
  - complainant answerable for costs, &c., 717.
- FUGITIVES,
  - from justice, an act of conrgess respecting, 798 to 800.
- FUNDS,
  - school, 34, 89, 220.
    - (See *School Funds.*)
  - money required to be paid out of a particular fund by state treasurer, 85.
  - received by officers for distinct object, to be kept separate, 165.
- FUTURE ESTATES,
  - how created, 315.
  - when not to be void, 316.
  - when defeated by birth of child, 316.
    - (See *Estates.*)
- GAMING AND BETTING,
  - punishment for, 706, 707.
    - (See *Betting and Gaming.*)
- GAMING DEVICE,
  - punishment for keeping, 706.
- GARDENS,
  - when road not to be laid through, 175.
  - penalty for injuring fence inclosing same, 256.
  - committing wilful trespasses in, 695.
- GARNISHEES,
  - proceedings against, in justices' courts, 459 to 462.
  - duty of officer in summoning, 473.
  - on attachments inserted in writs of execution, 550.
  - under proceedings by attachment, 591.
    - proceedings thereon, 591, 592.
    - (See *Attachments.*)
- GATES,
  - penalty for opening or prostrating in certain cases, 256, 257.
  - when may be erected on plank and turnpike roads, 280.
  - when location of may be changed, 280.
  - when shall be thrown open, 283, 284.
  - proceedings on same, 283, 284.
  - list of rates of tolls to be posted at, 285.
  - how to be tended, 284, 285.
  - penalty for injury to, 285, 694, 695.
  - same for passing or avoiding without payment of toll, 285.
- GENERAL ELECTIONS, 36, 64.
- GENERAL ISSUE,
  - with notice, in justices' court, 450.
  - ib., in courts generally, 502.
  - ib., in case of set-off, 507.
  - ib., in actions for forfeitures and penalties, 560, 622.
  - ib., for forcible entries and detainers, 609.
- GOODS AND CHATTELS,
  - lost, 251, 252.
  - fraudulent conveyances and contracts relative to, 388, 389.
  - mortgages of, to be filed, 254, 389.
  - liable to execution, 538.
  - bound from time of levy, 539.
  - what exempt from levy and sale, 540, 541.
- GOVERNOR,
  - executive power vested in, 26.
  - his term of office, 26.
  - who eligible to office of, 26.
  - when and how elected, 26.
  - his powers and duties, 26.
  - his compensation, 26.
  - may grant reprieves, commutations and pardons, 26, 731.
  - when his powers and duties to devolve on lieutenant governor, 26, 27.
  - his power and duty relative to the passage of bills, 27.
  - may remove certain officers, 28.
  - his official acts, how authenticated, 37, 81.

GOVERNOR,
first elected, how long to hold office, 44.
to maintain and defend sovereignty and jurisdiction of state, 50.
entitled to copy of laws, 61.
when to be elected, 64, 76.
when to order elections, 66.
when may appoint special messenger, 74.
to cause laws and resolutions to be deposited with secretary, &c., 80.
to notify attorney general of suits, and employ counsel, 80.
when his salary to cease, 80.
may offer rewards, 80.
may draw the five per centum, &c., 81.
to distribute the public arms, 81.
appropriation for contingent expenses of executive office, 81.
when he may declare certain offices vacant, 115.
may remove certain officers, 115, 116.
when may fill certain vacancies, 116, 117.
when may appoint regents of university, 186.
to be superintendent of public property, 210.
to take charge of library and appoint a librarian, 210.
to make rules respecting library, 210.
what public property to be under his exclusive control, 210.
his approval in relation to school lands, 211.
to sign patents for same, 214.
to prescribe rules for keeping books and accounts relating to same, 217.
to furnish commissioners with books and stationery, 217.
when to execute deed of lands, 223.
when may suspend sale of school lands, 224.
when may appoint appraisers of school and university lands, 225.
to issue commissions to officers of uniform companies, 227.
when may furnish state arms to so same, 228.
when may require return of same, 228.
may appoint commissioners to take ackowledgment of deeds in other states, 332.
may appoint agents to demand fugitives from justice, 715.
to issue warrant on conviction for capital offence, 730.
to respite convict insane or quick with child, 730.
armed force, when called out, to obey, 704.
his powers and duties in relation to the revised statutes. 740, 741.
to cause certain acts to be published and distributed, 744.
his duties in relation to election of judges of circuit courts, 759.
when may appoint appraisers of school and university lands. 764.
his duties in relation to the improvement of the Fox and Wisconsin rivers, 768 to 773.
GRACE,
when allowed on bills of exchange and promissory notes, 263.
GRAIN,
standard weight of, 261.
in what order to be ground, 262.
maliciously burning, 689.
willfully injuring, 695.
GRAND JURORS,
who liable to serve as, 510.
how sworn, &c., 513.
GRAND JURORS,
not to be petit jurors, 726.
(See *Jurors.*)
GRANT,
of lands reserving rent, limited in duration, 20.
of certain lands to this state, not to be prejudiced, 22.
of powers, how made, 323.
powers of disposition by, not to be executed by will, 324.
of lands, to be in writing, 388.
ib., of trust in lands, 390.
(See *Conveyances.*)
GRANT COUNTY,
boundaries of, 53.
GRANTEES AND GRANTORS,
definition of, 59.
when to pay taxes on lands, 165.
of a power, definition of, 326.
GRANTORS,
interest remaining in, in certain cases, 320.
of a power, directions by, 324.
directions of when to be observed, 324, 325.
GRASS,
on school lands, when may be sold, 224.
wilfully destroying, 695.
GRAVEL,
when overseer of highways may dig, 169.
damages for taking may be appraised, 169.
GREAT SEAL,
of state, legislature to provide, 37.
who to keep, 37, 81, 311.
what acts of governor to be authenticated thereby, 37.
description of, where deposited and recorded, 83, 311.
to be affixed to patents, 214.
(See *Seal of State.*)
GREEN COUNTY,
boundaries of, 53.
GRIST MILLS,
rates of toll allowed owners of, 262.
order in which grain to be ground, 262.
owners not compelled to grind for distilling or sale, 262.
when not liable for loss of grain, &c., 262.
penalty on owner for breach of law, 262.
GROSS FRAUDS,
at common law, how punished, 693.
GUARDIANS,
personal property held by, where taxable, 140.
holding stock in manufacturing corporations, &c., not personally liable, 288.
collusion of, not to prejudice infant heirs, 336.
when may be licensed to sell real estate of ward, 350.
to give bond, 350.
when approbation of town supervisor, necessary, 350.
foreign, may be licensed to sell real estate, 350.
liable for neglect, misconduct or fraud in certain cases, 352.
when consent of, necessary to marriage of minor, 392.
judge of probate may appoint, 398.
who to nominate, 398.
in what case judge to nominate, 398, 399.
when nomination may be certified by justice of the peace, &c., 399.
when parent entitled to custody of minor child, 399.
when to have custody of ward, &c., 399.
powers and duties of guardians, 399.
bond of same, 399.

GUARDIANS,
  when expenses of education of minor to be defrayed from income of his property, 399.
  father may appoint guardian by will, 400.
  such guardian to give bond, 400.
  powers of court to appoint, to prosecute or defend suits, &c., 400.
  of insane person, application for appointment of, 400.
  hearing and appointment, 400.
  powers and duties of such guardians, 400.
  when may be appointed for spendthrift, &c., 400.
  notice to supposed spendthrift, 400.
  copy of complaint may be filed with register of deeds, and its effect, 401.
  allowance for expenses of ward in defending, 401.
  powers and duties of guardian of spendthrift, 401.
  to pay debts of ward out of his estate, 401.
  to settle accounts and collect debts of ward, &c., 401.
  how to manage estate of ward, 401.
  may assent to partition and assign dower, 401.
  appraisal of estate of ward, 401.
  how personal estate disposed of, 402.
  transfer of stocks and investment of same, &c., 402.
  removals and resignations of guardians, 402.
  marriage of famale ward terminates guardianship, 402.
  discharge of guardians in certain cases, 402.
  when new bond to be given by, &c., 402.
  bond, where to be filed, and when and how prosecuted, 402.
  within what time actions to be brought against sureties in bond, 402.
  proceedings in case of embezzlement, &c,. 402, 403.
  may be appointed for minors, &c., residing without the state, 403.
  powers and duties of such, 403.
  bond to be given by same, 403.
  guardianship first granted, how far shall extend, 403.
  compensation of, 403.
  account of joint guardians, how may be allowed, 403.
  more than one may be appointed for same person, 403.
  word "spendthrift" defined, 403.
  may sign indenture with ward, 404.
  on application of infants to sell real estate, 420.
  for infants in justices' courts, 448.
  ib., in courts of record, 497, 498.
  when not liable for costs, 498.
  for minors in partition suits, 572.
  when liable for waste, 581.
GUIDE BOARDS,
  overseers to maintain, 169.
  penalty for injuring or removing, 184, 695.
GUIDE POSTS,
  to be erected and kept in repair, 169.
HABEAS CORPUS,
  privilege of writ of, 9, 20.
  when court or judge may award writ of, to bring up person for misconduct, 599, 600.
  who entitled to writ, 626.
  who not entitled to, 626.
  application for, how made, by whom and to whom, 626.
  applicant to make oath, 626.
  what petition for, must state, 626, 627.
HABEAS CORPUS,
  to be granted without delay, 627.
  form of writ, 627.
  not to be disobeyed for defect of form, 627.
  penalty for refusing writ, 627.
  return, what to be stated in, 628.
  when same to be verified, 628.
  officer to bring body in certain cases, 628.
  person refusing to obey writ, to be imprisoned, 628.
  attachment, when directed to coroner, 628.
  officer may have party brought before him, 628.
  sheriff to have power of county, 629.
  cause of confinement inquired into, 629.
  when party set at liberty, 629.
  when remanded, 629.
  if prisoner in custody under civil process, in what cases may be discharged, 629.
  legality of judgment not to be inquired into, 630.
  party when to be bailed, 630.
  when placed in custody, 630.
  in whose custody to be until judgment, 630.
  person interested to have notice, 630.
  when district attorney to be notified, 630.
  party may deny facts set forth in return, 630.
  proceedings when party cannot be brought before officer, 630.
  obedience to writ or order, how enforced, 631.
  penalty, 631.
  officer not liable for escape in obeying writ, 631.
  person discharged not to be again imprisoned for same cause, 631.
  what not deemed same cause, 631.
  penalty for imprisoning person discharged, 631.
  person transferring prisoner to custody of another to elude writ, to be guilty of a misdemeanor, 632.
  concealing party, misdemeanor, 632.
  assisting to conceal, 632.
  penalty for concealing, 632.
  warrant in certain cases, 632.
  when to order arrest of person having prisoner in custody, 632.
  how executed, 632.
  person having prisoner, how dealt with, 632.
  penalty for refusing copy of warrant, 632.
  when writ made returnable, 633.
  by whom and how served, 633.
  ib., when person conceals himself, 633.
  sheriff, &c., to obey writ, 633.
  petitioner, when to pay charges, 633.
  when prisoner to be produced, 633, 634.
  provisions of common law abrogated, 634.
  act not to restrain courts issuing writs in certain cases, 634.
HABITUAL DRUNKARDS,
  being, cause for divorce, 394, 395.
  appointment of guardians for, 400.
  circuit judge to have care and custody of, &c., 421, 423.
HALF BLOOD,
  kindred of, when to inherit, 339.
HAND WRITING,
  of person, when required, and when not, 60.
HANGING,
  punishment of death to be inflicted by, 730, 731.
HAY,
  maliciously burning, 689.
  wilfully cutting and carrying away, 695.

HEALTH,
public, preservation of, 229.
offences against, 711.
(See *Public Health.*)
HEAPED MEASURE,
certain commodities sold by, 261.
HEIRS,
interest of proprietor in cemetery lots to descend to, 271. 272.
meaning of, as applied to remainders, 315.
heirs of tenant for life, when to take as purchasers, 316.
infant, not to be prejudiced by collusion of guardian, 336.
advancements to, effect of, &c., 340.
to have notice of proof of will, 355.
when liable to creditors of deceased, 376.
and to what extent, 376, 377.
when liable to contribution, 377.
when may commence proceedings to compel the conveyance of real estate, 386.
when conveyances, &c., void as to, 390.
to what extent liable for debts of intestate, 555.
(See *Actions.*)
when may maintain action for waste, 581.
when may bring joint or several actions, 585.
HIGHWAYS,
certain rivers and navigable waters to be common, 33.
definition of, 59.
county supervisors may appoint commissioners to lay out, &c., in certain cases, 96
may alter or discontinue certain, 96.
electors may vote to raise moneys to repair, 118.
highways and bridges, 167 to 184.
officers intrusted with care and superintendence of, and their powers and duties, 167, 168, 169.
duties of commissioners of, 167, 168,
of overseers, 168, 169.
guide posts to be erected at intersection of, 169.
powers of supervisors in the construction and improvement of, 169.
if impassable to be immediately repaired, 169.
persons liable to work on, and making assessments for, 170, 171.
persons working on private, may be credited, 171.
when same may be annexed, 171.
duties of overseers in collecting and applying taxes, 172, 173, 174.
notice to work on, 172.
persons may work on or employ substitute, 172.
wages allowed per day, 172.
when person taxed shall not be allowed to work on, 172.
when taxes for, to be paid in money, 172, 173.
how collected, 173.
how to be applied, 174.
if unpaid, how to be collected, 174.
how laid out, altered or discontinued, 175 to 180.
not to be laid through orchards, &c., 175.
when damages to be appraised, 175.
notice of application for laying out, &c., 175.
proceedings of supervisors in laying out, 175, 176.
survey to be made and order recorded, 176.
damages may be agreed upon, 176.
when owner may apply for assessment of damages, 176.
HIGHWAYS,
proceedings thereon, 176, 177.
who to pay costs, 177.
when payable by town, how audited and collected, 177.
town line roads, how laid out, 177.
how worked, &c., 177.
how private roads laid out, 177.
all papers relating to roads to be filed with town clerk, 178.
width of highways, 178.
appeal from decision of supervisors in laying out same, 178.
how made, and proceedings thereon, 178, 179.
when supervisors to lay out road pursuant to decision of commissioners, 179.
when fences to be removed, 179.
when not opened and worked within four years to cease, 179.
what roads to be deemed highways, though not recorded, 179.
when discontinued, to whom to belong, 180.
value of same and benefits to owner of land, to be considered in estimating damages, 180.
United States, territorial and state roads, to be opened and worked same as others, 180.
when damages may be obtained for laying out same, 180.
when town supervisors may alter same, 180.
person aggrieved by such alteration, may appeal to county supervisors, 180.
county board may determine appeal, and who to pay costs, 180.
penalty for obstructing, 180 to 182.
when encroached upon, proceedings how to remove, 181, 182.
penalty for not removing, 181.
who to pay costs, 181, 182,
if fences are encroachments, when to be removed, 182.
trees fallen into from occupied land, by whom to be removed, 182.
penalty for neglect, and for falling tree into, 182.
miscellaneous provisions concerning, 183, 184.
when town liable for damages occasioned from insufficiency of, 183.
when overseer liable for same to town, 183.
trees in, to whom to belong, 183.
when same may be used to repair, 183.
persons may plant trees on side of, 183.
penalty for injury to, 184.
same for injuring or removing milestone or guide-board, 184.
same for injuring roads and bridges, 184.
provisions of road law, to extend to all parts of state except, &c., 184.
HOMICIDE,
justifiable, what constitutes, 682, 683.
excusable, what constitutes, 683.
in above cases verdict to be not guilty, 683.
HORSES,
may be restrained from going at large, 119.
attached to public conveyances not to be left without fastening, 248.
HOUSES,
of public worship, exempt from taxation, 139.
and tenements, to be kept in repair by tenant in dower, 335.
gaming, prohibited, 707.
of ill-fame, penalty for keeping, 708.
lease, of, when void, 708.
(See *Dwelling House.*)

HOUSEHOLD FURNITURE,
what, exempt from execution, 541.
HOUSE OF REPRESENTATIVES,
of United States, 5, 6.
HUSBAND,
may be required to furnish wife money to prosecute or defend in divorce, 395.
when may be prohibited from imposing restraint on liberty of wife, 396.
when to have life estate by curtesy, 336.
when may become party to suit with wife, 509.
HUSBAND AND WIFE,
conveyance of land by, 326.
marriage of, 391.
divorces, 393.
(See *Married woman, Wife.*)
IDIOTS AND LUNATICS,
to be included under term, "insane person" 59.
when lands of, sold for taxes, may be redeemed, 161.
(See *Insane Persons.*)
ILLIGETIMATE CHILDREN,
legal settlement of, 236.
when to inherit, 339.
estate of, to whom to descend, 339.
mother may consent to binding of, 407.
(See *Bastard.*)
IMPEACHMENTS,
by house of representatives, and trial by senate, 6, 28.
all civil officers of United States to be removed by, 11, 12.
proceedings on trial of, 6, 28.
judgment in cases of, 6, 28.
IMPOTENCY,
divorce may be decreed for, 394.
IMPOUNDING,
of cattle, 137.
(See *Pounds.*)
IMPRISONED DEBTORS,
when and how discharged, 652, 738.
IMPRISONMENT,
for debt on contract, not to be, 20.
of father of bastard child failing to give bonds, 245.
sentence of, for three years or more cause for divorce, 394.
when to prevent the statute of limitations running, 567, 645.
for contempts and misconduct in courts of record, 601.
females exempt from, on execution from justices' court, 473.
(See *Jails, Prisoners.*)
IMPROVEMENTS,
on school lands, when to be paid for by purchaser and when not, 215.
when and how, to be appraised, 217.
when amount of to be added to value of land, 218.
on real estate, 569, 570.
(See *Real Property.*)
internal improvements, 33, 45.
IMPROVEMENT OF FOX AND WISCONSIN RIVERS,
an act to provide for, 765.
construction of improvements to be under direction of board of public works, 765, 766.
board to consist of five, and four to be a quorum, 766.
their oath, term of office, and compensation, 766.
register to act as secretary, and his duties, 766.
board may appoint superintendent, &c., 766.
IMPROVEMENT OF FOX AND WISCONSIN RIVERS,
works, where commenced, and order in which prosecuted, 766
proceeds of sales how applied, 766.
works to be divided into sections and how let, 766, 767.
no extra compensation to be allowed contractor, 767.
duties of superintendent, 767.
no member of board or officer to have interest in contract, 768.
amount of contracts that may be let at one time, 768.
how lands brought into market, 768.
board, when to meet and their duties when met, 768.
governor to transmit monthly returns, 768.
board may take and use lands, waters and materials, 768.
when appropriated, when and how appraised, 768, 769.
when lands, water power, &c., reserved to state, 768.
either party may appeal from appraisement, 769.
entry of award to be made by secretary of board, and how, 769.
transcript to be acknowledged and recorded, &c., 769.
damages, when to be paid or tendered, and effect of same, 769.
when board may make rules and regulations, &c , 769.
board to report annually to governor, 769.
legislature to appoint treasurer annually, 769.
treasurer to give bond, &c., 769.
salary of register and treasurer, 769, 770.
board to prescribe rules and establish fees, 770.
who not to hold office of treasurer, &c., 770.
all payments to be in coin, 770, 771.
board to prescribe how accounts kept, 770.
use or mis-application of funds to be felony, 770.
treasurer to pay only on warrant of board, 770.
land office established at Oshkosh, 770.
register to be appointed by legislature for one year and to give bond, 770.
when governor may remove him and appoint another, 770.
governor to transmit plats, &c., to register, 770.
board to select lands for sale and to give notice of sale, 771.
sale, when to open and close, 771.
lands unsold to be disposed of at private sale, 771.
lands not to be sold for less that $1.25 per acre, 771.
register to enter applications for purchase, 771.
proceedings, when two or more apply for same tract, 771.
register to file receipt and give copy of entry, 771.
to enter on plats the number of the certificate, 771.
who may enter lands at $1.25 per acre, and to what amount, 771.
but one pre-emption to same person, 771.
who not entitled to pre-emption, and what reserved, 771, 772.
where two settlements on one lot, who entitled to pre-emption, 772.

IMPROVEMENT OF FOX AND WISCONSIN RIVERS,
  when and how, statement of intention to purchase to be filed, 772.
  what lands heretofore improved, to be registered, &c., 772.
  governor to grant patents, and how, and effect of same. 772
  how certain suits brought and recoveries applied, 772.
  governor to have general control and supervision of work, 773.
  may remove members of board and treasurer, and appoint others, &c., 773.
  officers to be paid quarterly out of improvement fund, 773.
  governor to appoint register and receiver in first instance, 773.
  act granting lands to aid in, 788, 789.
INCEST,
  punishment for, 709.
INCIDENTAL PRINTING, 207.
  (See *Printing.*)
INCIDENTAL EXPENSES,
  of executive office, annual appropriation for, 81.
INCORPORATIONS, 35, 307, 593, 594.
  (See *Corporations.*)
INDENTURES,
  of apprenticeship, when and how made, 238, 404.
  when master liable for breach of, and how action brought, 405.
  when apprentice, and when master may be discharged from, 405, 406.
  (See *Masters and Apprentices.*)
INDEX,
  to be kept by register of deeds, 111, 112.
  to be made by judge of probate, 433.
INDIANS,
  when qualified electors, 22, 63.
  certain property of, exempt from taxation, 139.
  penalty for selling or giving intoxicating drink to, 243.
  may sue and be sued, 494.
INDICTMENT,
  how to conclude, 31.
  persons punished for contempts liable to, 439, 602.
  not to lie for assault, battery or affray, 487.
  when penalties, &c., may be recovered by, 623.
  when no person to answer for criminal offence unless on, 681.
  when not held to answer second, 682.
  when shall be so held, 682.
  and proceedings before trial, 724, 725.
  when prisoner to be discharged, unless indicted, 724.
  limitation of criminal prosecutions, 724.
  when person indicted to be taken into custody, 724.
  copy indictment to be served, 724.
  when tried, 724.
  prisoner to have list of jurors, 724.
  to have copy indictment, 724.
  prosecuting officer to issue subpœnas, 724.
  when fees need not be tendered, 724.
  when prosecution on indictment may be stayed, 724.
  prisoner need not be asked how he will be tried, 725.
  plea of not guilty to be entered, if he refuse to plead, 725.
  person in prison on, when to be tried, 725.
  proof of truth of plea in abatement, 725.
  when not vitiated by defect of form, 727.
INDORSEMENT,
  possession of note, &c., to be evidence of, 528.
  on execution, of time when received, 539.
INFANT,
  when rents and profits to be applied to their support and education, 317.
  heirs, not to be prejudiced by collusion of guardian, 336.
  when and how, may bind themselves apprentices, 404 to 407.
  age of to be inserted in indentures, 404.
  suits by and against, in justices' court, 448.
  seized of lands, when compelled to convey, 419.
  how may apply to sell real estate, 420.
  when court may order letting or sale of same, 420.
  when deemed ward of court, 420.
  when may sue, 497.
  next friend to be appointed, 497.
  appointment how made, 497.
  next friend to give bond to, 497.
  order, where filed, 497.
  guardian, when and how appointed, 497.
  plaintiff may procure order of appointment, 498.
  born after making of will entitled to portion of estate, 558.
  may compel distribution and partition, &c., 558.
  defendant, when guardian may be appointed for in certain cases, 585.
  defendant in ejectment, 567.
  partition and sale of estates of infants, 579, 580.
  (See *Guardians, Minors.*)
INFAMOUS CRIME,
  persons guilty of, excluded from right of suffrage, 23.
  and from holding office, 36, 37.
INFECTED PERSONS,
  how removed and taken care of, 230.
INFORMATIONS,
  in the nature of a quo warranto, 636.
  in what cases may be filed of course, 636.
  summons thereon, 636.
  against persons for usurping office, and proceedings thereon, 636, 637.
  against corporations, 637.
  who to grant leave, 638.
  summons on, 638.
  proceedings on return of summons, 638.
  rule for appearance, and publication thereof, 638.
  against several persons claiming office, 638.
  judgment in such case, 638, 639.
  court may impose fine for usurping franchise, 639.
  judgment against corporation, 639.
  collection of costs, 639.
  powers of courts of equity, on vacation of acts of incorporntion, 639.
  record of judgment to be filed, 639.
  to recover property forfeited, 639.
  writ of quo warranto abolished, 639.
  proceedings on information and mandamus, 639, 640.
  circuit judge may award rule to show cause, &c., 639.
INHABITANT,
  word, how to be construed, 59.
INHERITANCE,
  power of deposition of in certain cases, 321.
  remainderman, &c., may sue for injuries to, 337.
  by right of representation, when it takes place, 340.

INJUNCTIONS,
allowance of, 410, 412.
not to be issued until bill filed, 414.
against person obstructing flow of water of meandered river, 417.
when issued, and by whom granted, 425.
when returnable, and proceedings thereon, 425.
to stay trial, proceedings to obtain, 425, 426.
ib., to stay proceedings after verdict, 426.
ib., after judgment, 426, 427.
damages on dissolution of, how ascertained, 427.
deposit may be dispensed with and bond executed, 427.
when both may be dispensed with, 427.
when errors to be released before injunction issues, 427.
sufficiency of sureties, how ascertained, 427.
bond to be filed before injunction issued, 427.
to whom bond to be delivered for prosecution, 427.
to stay or prevent waste, 583.
against corporations in certain cases, 594, 595, 596.
INJURY,
wilful, to school lands, 696.
ib., to private lands, 696.
(See *Malicious.*)
INNOCULATION,
with small pox with intent, &c., how punished, 711.
INQUESTS,
of the dead, justices to take, 731.
when to issue precept for jury, 731.
form of same, 732.
duty of constable, 732.
penalty on constable and jurors for neglect, 732.
if jurors do not appear, others to be summoned, 732.
oath of jurors, 732.
witnesses, how subpœnaed, &c., 732.
oath to witnesses, 732.
when testimony reduced to writing, 733.
jury to draw up inquisition, and what to contain, 733.
form of inquisition, 733.
proceedings when jury find murder, &c., 733.
when justice to issue warrant, 733.
to bury dead body of stranger, 733.
INQUIRY,
writ of, in ejectment, 568.
ib., in replevin, 614.
INSANE PERSONS,
disqualified from voting, 23, 63.
definition of, 59.
when lands of, sold for taxes may be redeemed, 161.
appointment of guardian for, 400.
circuit judge to have care and custody of, 421.
proceedings in relation to their estates, 421 to 423.
court may compel specific performance of contracts made by, 422.
where party becomes insane, how action to be prosecuted, 510.
defendants in ejectment, 567.
when acquitted by jury on criminal charge may be committed to prison, &c., 727.
jury to state fact of insanity in their verdict, 727.
INSOLVENT DEBTOR,
how may be discharged from his debts, 647.
to present petition and schedule to judge, 647.
affidavit annexed to petition, 647.
order for creditors to show cause, 648.
notice, how and where to be published, 648.
when cause to be heard, 648.
proof of publication of notice, 648.
creditor may demand that cause be tried by jury, 648.
jury to be drawn and sworn, 648.
how jury to be procured before single officer, 648.
how jury to be kept, 649.
effect of verdict, 649.
verdict to be recorded, 649.
to be but one jury in a case, 649.
if jury cannot agree, court to decide, 649.
insolvent may be examined on oath, 649.
certain payments to be made before discharged, 649.
when assignment of insolvent's estate ordered, 649.
effect of finding of jury, 650.
assignment, what to vest in assignee, 650.
when contingent, interest to vest, 650.
when discharge to be granted, and effect of same, 650.
where papers to be filed, 650.
clerk to enter judgment in favor of creditors, 650.
ib. to enter discharge, and effect of same, 650.
discharge may be pleaded, 650.
what actions barred thereby, 650.
discharge voidable in what cases, 651.
writ of error to supreme court, 651.
when new trial awarded, 651.
new hearing, how conducted, 651.
judgment thereon conclusive, 651.
lien of judgment, 651.
order for distribution of proceeds of property, 651.
INSPECTORS,
of elections in cities, to give notice of elections, 66.
of elections, what officers to act as, 67.
when and how may appoint two or more election polls, 67.
to be sworn, 67.
when electors may appoint inspectors, 67, 121.
to make proclamation of opening and closing polls, 68.
shall challenge every person they may suspect not qualified to vote, 69.
shall have power to maintain order and enforce their commands, 69.
their duties in relation to conducting elections and keeping ballot box, 68, 69.
to canvass the votes, and the manner of conducting the same, 69, 70.
to draw certified statement of result of election, 70.
one of, to deliver same to clerk of supervisors, 70.
their compensation, 76.
town supervisors to be board of, 121.
their duties as canvassers at town meetings, 122, 123.
when vote equal at town meetings, to determine choice by lot, 123.
their duty when election laws violated, 133.
of village elections, their duties, 292, 293.
of prisons, 735.

INSURANCE,
  of county buildings, 96, 110.
  moneys collected on, in case of damage, &c., 110.
INTENT TO DEFRAUD,
  to be a question of fact, 390.
  allegation in indictment, and proof of, 699.
INTEREST,
  rate of, to be paid on lands returned and sold for taxes, 157, 160.
  on school and university funds, how to be applied, 34, 220.
  rate of, on same, 221.
  rate of, on moneys due on school lands, 212.
  when to be paid, 212.
  any rate agreed upon by parties to be legal, 264.
  when no rate agreed upon, to be seven per cent, 264.
  when to be collected on execution, 539.
  collection to be directed on execution, 539.
  accrued after judgment, not to affect question of costs, 658.
INTERNAL IMPROVEMENT,
  state never to contract debts for, 33.
  not to be a party to, &c., 33.
  lands granted for, how to be applied, 33.
  state to sell lands granted in aid of, 45.
  (See *Improvement of Fox and Wisconsin rivers.*)
INTERNAL POLICE,
  of the state, 235 to 259.
INTERMARRIAGE,
  between relatives nearer of kin than first cousins forbidden, 391.
  after divorce, court may revoke decrees, &c., 398.
INTERROGATORIES,
  complainant in chancery, to answer on oath, 417.
  certain depositions to be taken on written, 519, 520.
  in cases of attachment for misconduct, 601.
INTESTATE ESTATES,
  application and distribution of, 362, 363.
  what probate court to have jurisdiction of, in certain cases, 363.
  who entitled to letters of administration, 363.
  liability of persons embezzling or alienating before letters granted, 364.
  (See *Settlement of Estates of Deceased Persons.*)
INVENTORY,
  of unclaimed property, to be made, 253.
  of property of persons absconding, to be made, 238.
  of estates of deceased persons, 366.
  of property of wards, to be made by guardians, 399.
  of property seized on attachments from the circuit and county courts, 588.
IOWA COUNTY,
  boundaries of, 54.
ISSUE,
  definition of, 59,
  meaning of, as applied to remainders, 315.
  in proceedings for divorce, court may award, 395.
  in chancery, when cause deemed at, 417.
  of facts in, to be tried by jury, 417.
  in county courts, how tried, 435,
  of law, to be first tried. 560.
  of fact in ejectment, 568,
  in partition cases, may be tried by jury, 572.
ISSUE,
  in proceedings on informations, how tried, 637.
  of fact, how tried on proceedings by mandamus, 634.
  ib., in criminal cases, 726.
JAILS,
  if prisoner escape through insufficiency of, county liable, 94.
  sheriff to have charge of, 105.
  former sheriff to deliver to his successor, 106.
  of the relief of persons confined in, 652, 653.
  when persons confined for tort to be discharged, 652.
  notice of application to be given, 652.
  how and when served, 652.
  prisoner to be examined on oath, 652.
  plaintiff may propose interrogatories, 652.
  oath to be administered to prisoners, 652.
  form of oath, 652.
  justices to make certificate, 652.
  when jailor to discharge prisoner, 653.
  if not discharged may apply every ten days, 653.
  effect of discharge, 653.
  judgment to remain in full force against property, 653.
  when debtor to pay charges for support in prison, 653.
  plaintiff may order prisoner discharged, 653.
  creditor to advance money for support of prisoner, 653.
  their management and discipline, 735.
  used as prisons, and for what purposes, 735.
  proceeedings when no jail in county, 735.
  what county to pay expense, 735.
  expenses of convicts, by whom paid, 735.
  inspectors of prisons, their duty, 735.
  sheriff, &c., not to sell liquors, except, &c., 736.
  males and females not to be in same room, 736.
  penalty for violation of last section, 736.
  ib. for selling liquor, 736.
  prison to be kept clean, and prisoners how treated, 736.
  prisoners to have bible, 736.
  sheriff to keep calendar and what to contain, 736, 737.
  when to return copy of same to court, 737.
  jails, how constructed, &c., 737.
  sentence of solitary confinement, how executed, 737.
  when sheriff to furnish tools, &c., to prisoner, 737.
  unruly prisoner, how treated, 737.
  penalty for escaping from, 738.
  prisoners removed in case of fire, 738.
  convict imprisoned for non-payment of fine, how liberated, 738.
JAILERS,
  may have charge of jail, 105.
  their duty in presenting names of prisoners, &c., to each circuit court, 106.
  to furnish bedding and clothing, &c., to prisoners, 737.
  duty of, in relation to persons committed under authority of U. S., 738.
  penalty for neglect, 738.
  their duty relative to making out and transmitting to district court of U. S., calendar of prisoners, 739.
  ib. transmitting their account to marshal of U. S. for support of prisoners, 739.
  not to furnish prisoners with liquor, 736.

JAILERS,
- not to keep male and female prisoners in same room, 736.
- how to keep prison, 736.

JEFFERSON COUNTY,
- boundaries of, 54.

JOINT DEBTORS,
- estate of one dying, liable for debt, 371.
- judgment to be against all, where process is served on part, 538.
- force and effect of such judgment, 539.
- how execution to issue thereon, 539.
- attachment against property of, 591.

JOINT TENANTS,
- name of but one need be used in certain complaints, 257.
- when may maintain action against co-tenant, 337, 581.
- may have partition of lands, 380.
- may bring joint or several actions for the recovery of real estate, 585.

JOINTURE,
- when to bar dower, 334, 335.
- when widow shall be deemed to have elected to take, 335.

JOURNALS,
- each house of legislature to keep and publish, 24.
- how distributed, 62.
- to be published, 207.
- chief clerk of each house to furnish copy of to printer, 209.

JUDGES,
- to be elected, 28, 29.
- their term of office, 28, 29.
- of supreme and circuit courts, to be classified, 29.
- vacancy in office of supreme or circuit court judge, how filled, 30.
- not to be elected within thirty days of a general election, 30.
- salary of, 30.
- not to receive fees, or hold any other office, 30.
- who eligible to office of, 30.
- may be removed from office, and how, 30, 31.
- entitled to copy of laws, 61.
- when may authorize the use of a temporary seal, 311.
- may solemnize marriages, 391.
- of supreme court, may make and amend rules of practice, 409, 410, 438.
- of appellate court, when not to take part in decision of cause, 440.
- not to have partner practicing in court of which he is judge, 440.
- when not to be interested in costs of suit, 440.
- not to receive fees unless given by law, 440.
- when not to give advice or draft papers, 441.
- when not to appear as attorney, 441.
- their duties in relation to compelling the delivery of books and papers, 624.
- (See *Circuit judges, County judges, Probate, Judge of.*)

JUDGMENTS,
- against school districts, how collected, 203, 204.
- in what currency to be computed, 264.
- fractions of a cent in, to be rejected, 264.
- against executors, &c., when to be certified to probate court, 372.
- in suits on probate bond, 384.
- to delay or defraud creditors, void, 390.
- injunctions to stay proceedings after, 426, 427.

JUDGMENTS,
- on confession, before justice of the peace, 467.
- of discontinuance, when may be entered, 503.
- on set-off, how rendered, 506.
- on report of referees, 508.
- justices', in other states, how proved, 523, 524.
- on assessment of damages by clerk, 534.
- party obtaining, to make out judgment record, 534.
- of what to consist, and to be signed, 534.
- plaintiff not to be non-suited after verdict, 534.
- when not to be set aside on motion, 534.
- to be a charge upon lands, 534.
- writ of error, not to affect lien of, 535.
- lien to cease after ten years 535.
- what time not reckoned part of ten years, 535.
- what clerk to enter on docket, 535.
- docket not to bind real estate within one year after death of party, 535.
- if verdict rendered and party die, &c., when court may authorize judgment docketed, 535.
- time of signing judgment record to be stated, 535.
- on plea of confession, 535.
- clerk to mark on record time of filing, 536.
- not valid till signed and filed, 536.
- not to affect lands till filed and docketed, 536.
- clerk to make certain entries in books, 536.
- books open to search, 536.
- penalty on clerk for neglect to docket, 536.
- recognizance not to bind lands, 536.
- docket of, how discharged, 536.
- satisfaction of, how acknowledged, 537.
- satisfied to amount returned on execution, 537.
- duty of clerk thereon, 537.
- clerk to give transcript of record, 537.
- to be against all of joint debtors, where process is served on part, 538.
- (See *Executions.*)
- against legatees, 555.
- on bonds, to be for penal sum, 561.
- in action of waste, 581.
- ib., for private nuisance, 583.
- in ejectment on verdict, conclusive, 566.
- on default in ejectment, when conclusive, 566.
- on writ of inquiry in ejectment, 568.
- in suits by attachment, 590.
- in replevin, 614, 615.
- on information for usurping office, 636, 638, 639.
- copy of record of, against corporation, to be filed with secretary of state, 639.
- actions upon, limitation of, 643.
- when presumed paid, 646.
- costs and damages on reversal or affirmance of, 657.
- fees allowed party recovering, 674, 675.
- *in criminal cases, and the execution thereof,* 729 to 731.
- sentence, where no punishment provided by statute, 729
- to give sureties to keep peace, when required, 729.
- duty of clerk on conviction, 730.
- ib., of sheriff, 730.
- form of sentence to state prison, 730.
- solitary imprisonment to precede hard labor, 730.
- how sentence executed where there is no jail in county, 730.

JUDGMENTS,
- what county to pay expenses, 730.
- proceedings on conviction for capital offence, 730.

JUDICIAL,
- *power*, of United States, where vested and extent of, 12.
- construction of, 17.
- of this state, where vested, 28.
- legislature may vest in certain persons, 32.
- *officers*, not to exercise their office after impeachment, until acquitted, 28.
- *proceedings*, in each state, how authenticated, 522, 800, 801.
- proceedings in other states, faith and credit to be given to, 12, 13.
- when admissible as evidence, 522.

JUDICIAL CIRCUITS,
- division of state into, 29.
- limits may be altered, and may be increased or reduced in number, 29.
- judge to be chosen for each, 29.
- when judge may hold court in other than his own, 30, 761.

JURISDICTION,
- of state, 50.
- common, of certain counties, 93, 94.
- of the supreme court, 410.
- of circuit courts, 412, 413.
- of judges of probate, 429, 430.
- when same not to be contested, 430.
- of county courts, 433, 434.
- of justices' of the peace, 442, 484, 690, 691, 695, 696.
- criminal, of justices, 484 to 492.
- of circuit court, in matters of waste, 583.
- ib., concerning nuisances, 584.
- ib., over officers, &c., of corporations, 594, 595.

JURY,
- when shall try crimes against United States, 12.
- right of trial by, 17, 19.
- how may be waived, 19.
- when to determine the law and the fact, 19, 712.
- to assess damages for laying out roads, 176, 177.
- to inquire into encroachments on roads, 181.
- to try issue of facts in chancery, 417.
- trial by in county courts, 435.
- when and how same obtained, 435.
- in justices' courts, 454.
- how summoned in criminal cases in justices' courts, 485.
- challenge of, 486.
- oath of, 486.
- how to hear cause and deliver verdict, 486.
- proceedings against, 487.
- in proceedings for relief of insolvent debtors, 648, 649.
- (See *Jurors.*)

JURY, GRAND, 510 to 515.
- no person to answer for crime unless on presentment or indictment of, 16, 681.
- (See *Jurors.*)

JURORS,
- inhabitants of county competent, when county interested, 95.
- their fees on appraisal of damages for laying out roads, 177.
- their duties in inquiring into encroachments on roads, 181, 182.
- their fees, 182.
- *grand and petit jurors*, 510 to 515.
- who liable to serve, 510.
- who exempt, 510.

JURORS,
- county supervisors to make lists of, 511.
- circuit judge may order less number to be summoned, 511.
- lists of, when to be made out, 511.
- suitable persons to be selected, 511.
- clerk to put names in boxes, 512.
- when and how to be drawn, 512.
- venires to be issued; when jurors to appear, 512.
- sheriff to summon jurors, and return venires, 512.
- penalty on, for non-attendance, 512.
- *grand* jurors, number of to be sworn, 512.
- deficiency of, how supplied, 512.
- officer to summon others and they to serve, 512.
- person accused may object to grand juror, 512.
- foreman to be appointed by the court, 512.
- clerk to prepare list of grand jurors, 513.
- two to be first sworn, 513.
- form of oath, 513.
- foreman to administer oaths to witnesses and return list of same, 513.
- grand jury to appoint clerk to keep minutes, 513.
- may be again summoned at same term, 513.
- not to disclose fact of indictment found, 513.
- not to testify how jurors voted, &c., 513.
- may be required to testify how witness testified, 513.
- when district attorney to attend grand jury, 514.
- *petit*, when taken from bystanders, 514.
- by whom returned, 514.
- qualifications of, 514.
- may be examined as to bias or interest, 514.
- liability to be taxed, no cause of challenge, 514.
- when verdict not to be set aside for irregularity, 514.
- proceedings, when jury cannot agree, 514.
- when may view premises, 514.
- penalty on officer for neglect to draw and summon jurors, 515.
- ib. on clerk for fraud in drawing jurors, 515.
- clerk to deliver to jurors certificate of attendance, 515.
- tales jurors, when and how summoned, 515.
- three peremptory challenges in civil cases, 515.
- challenges by prosecuting officer in capital cases, 515.
- ib. by either party in other criminal cases, 515.
- penalty for not appearing in certain cases, 608.
- fees of, 673, 674.
- punishment for corrupting, 701.
- punishment of, for accepting bribes, 701.
- what to disqualify in capital cases, &c., 726.
- (See *Trials.*)

JUSTICE,
- how it should be obtained, 20.
- public offences against. 700, 703.

JUSTICES OF THE PEACE,
- judicial power vested in, 28.
- to be elected and term of office, 31, 129.
- elected to fill vacancy, to hold for residue of term, 31.
- suits for and against counties may be prosecuted before, 95.
- same of suits by and against towns, 119.
- penalties for breach of by-laws of town, may be prosecuted before. 119.

JUSTICES OF THE PEACE,
when new town organized, to continue to hold office, 125.
elected in new towns to meet and draw lots, 125
if they neglect, clerk to select person to draw, 125, 130.
number to be elected when county consists of one town, 126.
notice of election of, to be transmitted to clerk of circuit court, 127.
when may act as members of town board, 127.
how many to be elected at first town meeting, 129.
to determine their term of office by lot, 129, 130.
to take oath and give security, 130.
to distinguish on ballots the persons voted for to supply vacancies, 131.
their duty when election laws violated, 133.
to issue precept for appraisal of damages in laying out roads, 176.
their fees therefor, 177.
their duties on appeal from, in laying out roads, 178, 179.
their fees thereon, 179.
to constitute boards of health, 229.
their powers and duties as such, 229, 230.
ib., in proceedings against absconding father, &c., 237, 238.
when may entertain suits under act relative to sale of spirituous liquors, 243.
their powers and duties under chapter relative to support of bastards, 244 to 246.
ib., relative to strays, and lost money and goods, 250, 251.
ib., in relation to unclaimed property, 253.
their fees in relation to last two particulars, 250, 254.
to be inspectors of plank and turnpike roads, 283.
their powers and duties as such, 283, 284.
their fees in relation thereto, 284.
their powers in relation to calling corporation meetings, 307.
may solemnize marriages, 391.
when may certify nomination of guardians for minors, 399.
their powers in relation to apprentices, 406.
when to administer oaths in certain cases, 430, 431.
appeals from to county court, 433, 437, 475.
when not to appear as attorney, 441.
where to keep their office, 442.
when not to hold their office in same room with an attorney, 442.
jurisdiction of in civil cases, 442, 443.
to keep a docket, 443.
not to purchase demands to sue, 481.
not to act before qualified, 481.
to deliver over books and papers on expiration of term, 482, 483.
jurisdiction of, in criminal cases, 484.
(See *Justices' Courts.*)
may issue subpœnas, 516.
ib., notices to take depositions, 516.
judgments, in other states how proved, 523, 524.
their docket, when and how to be evidence, 527.
when proceedings before, may be proved by their own oath, &c., 528.
depositions to be used before, how taken out of state, 528.
to have cognizance of suits against boats and vessels, 604.

JUSTICES OF THE PEACE,
authority of, in cases of forcible entry and detainer, 605.
jurisdiction of, in cases of larceny, 690.
ib., in cases of receiving stolen goods, 691.
ib., in cases of injury to trees, monuments, gardens, &c., 695, 696.
ib. in cases of injury to school lands, 696.
punishment for falsely assuming to be, 703.
may issue warrant to search for obscene books, 709.
jurisdiction of, in certain criminal cases, 710, 713.
to take inquests of the dead, 731 to 734.
(See *Inquests.*)
their fees, 671.
may tax same, 671.
who to recover costs in civil cases before, 672.
when justice may give or refuse costs, 672.
when to tax costs, 672.
may require constable to attend trial, 673.
(See *Fees.*)

JUSTICES' COURTS,
jurisdiction of justices' courts in civil cases, 442, 443.
where justices to keep their office, 442.
justice not to keep office with attorney, 442.
partner of justice not to practice before him, 442.
powers of, 442.
jurisdiction of actions and proceedings, 442.
actions of which justice may take cognizance, 443.
actions on surety bonds taken by them, 443.
ib., on surety bonds in favor of towns, 443.
ib., on accounts not exceeding two hundred and fifty dollars, 443.
actions of which justice shall not take cognizance, 443.
docket to be kept by justice, 443.
what justice shall enter in docket, 443, 444.
commencement of suits and service and return of process, 444 to 447.
security for costs when required, 444.
memorandum of security on the docket, 444.
execution to issue against security, 444.
suits, how instituted, 444.
process, how issued, 444.
summons, when to be first process, 445.
ib., command and return of, 445.
when defendant's name is unknown, may be sued by fictitious name, 445.
when summons returnable in three days, 445.
warrant, when plaintiff entitled to, 445.
affidavit on application for warrant, 445.
pendency of suit, when not to be pleaded in abatement, 446.
service of summons, 446.
warrant, what to contain, 446.
ib., how served and returned, 446.
how long defendant to be detained in custody, 446.
return of process, 446.
penalty on officer for failure to execute and return process, or making false return, 446.
person other than officer empowered to execute process, 446.
form of summons, 447.
ib. of warrant, 447.
appearance of parties, 447, 448.
who may appear and conduct or defend suits, 447.

JUSTICES' COURTS,
next friend to be appointed in suits by infants, 448.
guardian to be appointed in suits against infants, 448.
forms of consent of next friend and guardian, 448.
corporations may sue before justice, 448.
ib. shall appear and defend by attorney, 448.
how party to appoint agent, by whom to appear, 448.
authority of agent, how proven, 448.
pleadings, the removal of causes, and set-off of mutual judgments, 449 to 451.
on return of process, justice to wait one hour, 449.
where plea on promises inserted, for what plaintiff may declare, 449.
trespass on the case, when may be brought for direct injuries, 449.
trover, when action of lies, and judgment therein, 449.
sales and transfers during pendency of trover void, 449.
plaintiff when required to give verbal statement of demand and bill of particulars, 449.
when and how defendant may remove cause to another justice, 449.
cause removed, when justice is a material witness or near of kin, 449.
plea of defendant, 450.
bill of particulars of set-off, to be given by defendant, 450.
set-off, how pleaded when amount exceeds justice's jurisdiction, 450.
defendant may give notice with plea of general issue, 450.
issue to be joined before adjournment, 450.
when and how defendant may plead or give notice that the title to lands will come in question, 450.
bond to be given by defendant, 450.
justice to proceed with the case if bond not given, 450.
proceedings by justice on filing plea of title to lands and bond, 450.
county court to be possessed of cause on filing proceedings and papers before the justice, 451.
when justice to dismiss cause on plaintiff's own showing, 451,
proceedings when judgment proposed as set-off was rendered before another justice, 451.
duties of justice before whom set-off of judgment is proposed to be made, 451.
adjournments, 451, 452.
when and how long justice may adjourn without motion, 451.
first adjournment on application of party, 451.
subsequent adjournment, when and how granted, 452.
time adjournment may be granted, 452.
party applying for, to pay costs, 452.
defendant to be discharged when cause commenced by warrant is adjourned by consent, 452.
cause commenced by warrant, how adjourned on application of defendant, 452.
when new recognizance not to be given, 452.
what plaintiff must show to entitle him to recover on recognizance, 452.
when certain costs shall not be taxable, 452.
witnesses and depositions, 453, 454.
subpœnas, how and by whom served, 453.

JUSTICES' COURTS,
form of subpœna, 453.
attachment to compel attendance of witness, when may be issued, 453.
depositions, when allowed to be read on trial of cause, 453.
ib., of persons out of state, how to be taken, 453.
ib., used before justices to be allowed in court above, 453.
ib. of witness not resident in county may be taken, 453.
ib. of witness in attendance, when may be taken, 454.
competency of witness, how tried and determined, 454.
form of oath and affirmation to be administered to witness, 454.
minutes of evidence to be filed by justice, 454.
trial by jury and the incidents thereto, and of trials by the justice, 454 to 456.
either party may demand a trial by jury, 454.
neglect to make demand to be waiver of right, 454.
jurors, how selected, 454, 455.
justice to issue venire, 455.
parties may agree upon jury, 455.
talesmen may be summoned, 455.
form of venire, 455.
venire, how served and returned, 455.
when juror to be deemed guilty of contempt, and amount of fine, 455.
challenge of jurors for cause, and how tried and decided, 455.
oath of jurors, 455.
proofs, &c., to be in public, 456.
jury to be kept under charge of officer till they shall agree or be discharged, 456.
oath of officer having charge of jury, 456.
verdict, how delivered and judgment entered thereon, 456.
when jury to be discharged and new venire issued, &c., 456.
trial by justice without a jury, &c., 456.
when justice takes time to consider, to continue cause, &c., 456.
rules of evidence same as in courts of record, 456.
proceedings by attachment, and against garnishees, 456 to 462.
when and how creditor may proceed by attachment, 456.
affidavit for attachment, 456.
when returnable, 457.
form of writ, 457.
how executed, 457.
how defendant may obtain possession of goods attached, 458.
when perishable property, &c., is seized how same to be disposed of, 458.
compensation to officer for keeping property, 458.
notice to be published when defendant is not summoned, 458.
form of notice, 458.
how long to be published or posted, and proof thereof, 458.
proceedings when defendant does not appear, 459.
pleadings. &c., to be same as on summons, 459.
motion to dissolve attachment, 459.
effect of, if granted, 459.
garnishee to be summoned, 459.
form of summons, 459.
how served and returned, 460.

JUSTICES' COURTS,
liability of garnishee to plaintiff, 460.
how person other than defendant may retain possession of property attached in his hands, 460.
service of summons to be deemed commencement of suit against garnishee, 460.
proceedings, when garnishee fails to appear and answer, 460.
when and how default of garnishee may be set aside, 460.
affidavit and summons to be deemed a declaration, 460.
garnishee to be examined, 461.
suit to be continued, and when final judgment to be rendered, 461.
garnishee may appear and defend for defendant, 461.
issues, how tried; value of property to be assessed, &c., 461.
when garnishee to recover costs, 461.
when costs to be paid out of property, 461.
proceedings when it shall appear that garnishee is not to pay or deliver to defendant immediately, 461.
when judgment shall be rendered against garnishee, 461, 462.
garnishee may plead judgment against him in bar, 462.
proceedings in replevin, 462 to 466.
when may be brought, 462.
how to be laid and tried, 462.
not to be for property taken for taxes, 462.
for goods taken under execution, 462.
affidavit to be filed with justice, and what to contain, 462.
to be commenced by writ, when returnable, and form of same, 463.
writ, how served, 463.
how property taken when in dwelling house, &c., 463.
how plaintiff to proceed, if goods not replevied, 463.
officer to return writ and keep the goods, 463.
what to state in his return, 463.
pleadings in replevin, and effect of the general issue, 463.
proceedings in, how to be conducted, 464.
security on adjournment, and form of same, 464.
adjournments, 464.
plaintiff to prove allegations, and what justice or jury to find, 464.
order and judgment of justice, 464.
damages, when assessed to defendant, and re-delivery of property ordered, 464.
notice to be given if defendant not duly summoned, 464.
proceedings, if defendant has been notified and does not appear, 464.
bond to be executed before execution issues, 465.
judgment for plaintiff when goods are not replevied, 465.
execution on such judgment what to command, 465.
how officer to execute the same, 465.
goods to be irrepleviable by defendant, 465.
verdict and judgment, when property found part in plaintiff and part in defendant, 465.
judgment where one party has a lien on the goods, 465.
ib. to be rendered against principal and sureties, 466.

JUSTICES' COURTS,
constable to execute writ in suit against sheriff, 466.
proceedings by and against corporations, 466.
what actions against corporations cognizable before justice, 466.
summons to be first process, and how served, 466.
execution, when to issue, 466.
suits by and against towns to be commenced in adjoining town, 466.
how first process to be served, 466.
judgments, and filing transcripts thereof, 466 to 469.
justice to hear proofs, and render judgment when defendant fails to appear, 466.
judgment by confession, how, in what cases, and to what amount to be entered, 467.
statement and affidavit to be filed, 467.
judgment of non-suit, when to be rendered, 467.
ib., for defendant on the merits, when to be rendered, 467.
ib., to be with costs unless otherwise provided, 467.
when to be rendered forthwith, 467.
if sum found exceed jurisdiction, party may release excess, 467.
if on plea of set off which is indivisible, &c., how judgment rendered, 467.
balance due on such set off may be recovered, 467.
when new trial may be had on suits commenced by attachment or replevin, 468.
proceedings to obtain new trial in such cases, 468
proceedings on trial to be same as in other cases, 468.
judgment on joint contracts, &c., when but one of defendants served with process, 468.
force and effect of such judgment in evidence, 468.
bail may obtain judgment against principal, 468.
justice to revoke execution where judgment is stayed, 468.
transcript of judgment to be issued, 468.
when judgment to be a lien, 469.
when execution to issue thereon, 469.
form of transcript, 469.
executions, the stay thereof, and proceedings thereon, 469 to 474.
when and how to be issued, 469.
when to issue against body of defendant, 469.
what to command officer, 469.
forms of executions, 470, 471.
how long may be stayed, 471.
recognizance, to entitle to stay, 471.
form of, 471.
execution against principal and bail, 472.
entry by justice on issuing execution, 472.
renewal of, &c , 472.
against joint debtors when process not served on all, 472.
how executed, 472.
new or further execution, 472.
duty of officer on taking goods, 472.
same to be bound from time of seizure, 472.
sale to be advertised, when and how, 472.
goods to be sold, 472.
return of execution, amount to be paid over, &c., 473.

JUSTICES' COURTS,
purchase by constable to be void, 473.
when body of defendant to be taken, &c., 473.
creditors, &c., of defendant, may be garnisheed, 473.
duty of officer summoning garnishee, &c., 473.
to receive and receipt money tendered, 473.
females not to be imprisoned in civil cases, 473.
judgment against officer for amount of execution, when and how recovered, 473.
levy or sale not to be made after execution expires, 473.
proceedings against constable and sureties, 474.
removal of causes by certiorari, and proceedings thereon, 474, 475.
when party may remove cause on certiorari, 474.
proceedings to remove, and within what time, 474.
recognizance to be signed and attested, 474.
form of, 474.
when and how writ to be allowed, 474.
clerk to issue writ on filing affidavit, &c., 475.
to be served on justice within ten days, 475.
service of writ to stay proceedings, 475.
copy affidavit to be served with writ, 475.
duty of justice in making return, 475.
court may compel justice to make or amend return, 475.
cause may be brought on to argument, 475.
judgment to be rendered by county judge, 475.
restitution, how made on reversal of judgment below, 475.
certiorari to supreme court, 475.
appeals and proceedings thereon, 475 to 478.
when may be brought to county court, 475.
when judgment is less than fifteen dollars, 476.
requisites, to obtain an appeal, 476.
recognizance to be signed, and form of same, 476.
duty of justice in taking recognizance, 477.
fees to be paid, 477.
further proceedings suspended, 477.
certificate of appeal to be granted, 477.
effect of certificate, 477.
justice to make return and file papers, 477.
may be compelled to make return, 477.
and to amend the same, 477.
court may punish disobedience of justice, 477.
when court may determine case without jury, 477.
when appeal not to be dismissed because fees of justice not paid, 478.
appeal discontinued if not prosecuted, 478.
judgment for appellee for costs, 478.
how justice to proceed in case of dismissal or discontinuance, 478.
appellee may prosecute recognizance, 478.
issue below to be issue above, unless otherwise ordered, 478.
costs to appellant, 478.
judgment against surety, 478.
surety discharged unless execution issued, 478.
county courts may adopt rules relative to appeals, 478.

JUSTICES' COURTS,
proceedings for contempts before justices of the peace, 478 to 480.
when justice may punish for contempt, 478, 479.
punishment, what, 479.
right of offender to a hearing, 479.
may be summarily arraigned if present, 479.
form of warrant to bring offender before justice, 479.
proceedings of justice on conviction, 479.
warrant of commitment to set forth circumstances, 479.
form of record of conviction, 479.
when justice may commit witness, 480.
what order to specify, 480.
how long witness to be confined, 480.
justice to adjourn cause, &c., 480.
when witness to pay costs, 480.
msicellaneous provisions, 480 to 484.
justice may issue subpœnas and administer oaths, 480.
liability for moneys collected, 480.
penalty for acting before qualified, 481.
conviction of certain crimes to constitute removal from office, 481.
process issued by justice to be signed by him, &c., 481.
constable not to receive anything as a reward for neglect of duty, 481.
justice or constable not to purchase demands for prosecution, 481.
not to lend money to induce same, 481.
justice not to purchase judgment, 481.
penalty on justice and constable for violating above provisions, 481.
justice to file and preserve papers, 481.
to keep index of judgments, 481.
may transfer cause to another justice in case of sickness, 481.
parties to be notified, 482.
justice to deliver over books and papers on expiration of office, 482.
when to deliver the same to town clerk, 482.
town clerk may demand same, 482.
ib. to deliver same to another justice, 482.
notice to be posted, 482.
how justice to proceed in cause undetermined, on transfer of books and papers to him, 482
suits undetermined when office of justice becomes vacant, to be continued, 482.
justice to whom books, &c., are transferred, may issue execution, 482.
when justice to make return to appeal after he has gone out of office, 483.
when justice to whom books, &c., are transferred to make return, 483.
appeal may be taken after transfer of books, &c , 483.
proceedings on appeal when return cannot be compelled, 483.
court may compel return when justice has removed, 483.
constable to collect execution after his term of office expires, 483.
officer first to exhaust personal estate of principal debtor, &c., 484.
of the jurisdiction of justices in criminal cases, and of the proceedings therein, 484 to 492.
their powers and jurisdiction, 484.
empowered to hold court to try criminal offences, 484.
to examine complainant on oath, &c., 484.
when warrant to be issued and what to contain, 484.

JUSTICES' COURTS,
suit to be entered in docket, &c., 484.
when justice to try cause, 485.
when accused may give bail and when may be committed, 485.
charge to be read to accused, his plea, &c., 485.
when court to try issue, 485.
judgment on plea of guilty, 485.
trial by jury unless right waived, 485.
proceeding to obtain jury, 485.
venire, how issued, 485.
officer to summon jurors, and return venire, 485.
talesmen, when and how summoned, 485.
in what cases new jury may be summoned, 486.
challenge of jurors, 486.
oath of jurors, 486.
jury to hear proofs and be kept together, 486.
to deliver verdict publicly, 486.
justice to render judgment, and extent of punishment, 486.
when accused to be discharged, 486.
when complainant to pay costs, 486.
person convicted may appeal, 486.
justice to make return, 487.
may recognize complainant and witnesses to appear, 487.
court may enter judgment and issue execution for costs against complainant, 487.
judgment to be executed by warrant, 487.
proceedings against jurors and witnesses, 487.
certificate of conviction, 487.
when and where to be filed, 487.
to be evidence, 487.
miscellaneous provisions in criminal cases, 487 to 492.
assault, battery, &c., not indictable, 487.
to be tried before justice and amount of fine, &c., 487.
when justice may issue warrant on his own knowledge, 487.
when may arrest without warrant, 487, 488.
penalty for refusing to aid arrest, 488.
recognizances to be certified to circuit court, 488.
how justice to proceed when he has not jurisdiction of cause before him, 488.
justice to summon witnesses to attend trial, 488.
proceedings on conviction, 488.
judgment on conviction in circuit court, 488.
justice may verbally notify witnesses to attend trial, 488.
may require security for costs, 488.
fines, to whom paid, before committal, 488.
ib., after committal, 488.
district attorney to prosecute persons neglecting to pay over fine, 489.
form of warrant, 489.
ib., of certificate of conviction, 489.
ib., of execution 490.
ib., of commitment upon sentence, 490.
ib., of commitment after arrest and before trial, 491.
ib., of order to bring up prisoner, 491.
ib., of commitment, when justice shall find that he has not jurisdiction, 491.
appeals to circuit court, 728.
duty of justice on appeal, 728.
(See *Appeals.*)

KIDNAPPING,
or selling for slave, punishment for, 687.
where to be prosecuted, 687.
KILLING,
of a human being, what to be, 682.
(See *Murder, Manslaughter.*)
KINDRED,
degrees of, how computed, 339.
half blood, 339.
not punishable in certain cases as accessories to felony, 712.
LA FAYETTE COUNTY,
boundaries of, 54.
LAKES,
common and concurrent jurisdiction over, 50, 93, 94.
LAND,
tenure of, to be allodial, 20.
aliens may hold and convey, 20, 337.
term of leases and grants of, limited, 20.
title to in territory, to vest in state, 33, 38.
on failure of title to, to escheat to state, 33, 339.
granted to state, how to be disposed of, 44, 45.
definition of, 59, 390.
occupants of, to make partition fences, 133.
how to be described in assessment roll, 141.
liable to taxation, 138.
omitted, also liable, 144.
how may be discharged from taxes before sale, 157.
how sold for taxes, 158, 159.
bid off by county, liable to be taxed, but not sold, 159.
when clerk of supervisors may execute deed for, 159.
need not be sold for taxes in name of any person, 159.
unredeemed, when to be advertised, 160.
may be redeemed within three years, or before tax deed recorded, 160.
how redeemed, 160, 161.
when may be entered upon to construct drains, dig gravel, &c., 169.
damages for laying road through, 175, 176.
to revert on discontinuance of highway, 180.
of religious societies, how held, 268.
how may be taken for plank and turnpike road companies, 275 to 279.
amount limited to be held by stockholders in certain corporations, 286.
corporations may hold and convey to certain amount, 308.
enumeration of estates in, 313.
how to descend in certain cases, 319.
dower in, 333 to 336.
when widow not entitled to dower in, 333.
title to, by descent, 338 to 340.
sale of, by executors, administrators and guardians, 341, 344.
fraudulently conveyed, when may be recovered by executor, &c., 368.
fraudulent conveyances of, void, 387.
conveyances of, &c., to be in writing, 388.
contracts for sales and leases of, to be in writing, 388.
proceedings in chancery to quiet title to, 417.
improvements on, 569, 570.
when court may order survey of, 585.
punishment for selling without title, 694.
(See *Real Property.*)
LAND MARKS,
punishment for removing, destroying, &c., 695.

LAND OFFICE,
  to be established at Oshkosh, 770.
LANDS, SCHOOL AND UNIVERSITY, 34, 35, 210.
  (See *School and University Lands.*)
LANDLORD AND TENANT,
  when liable to tenant for taxes paid, 164, 172.
  how may recover rents, 336.
  when may be made defendant with tenant, 586.
  proceedings when tenant holds over, or does not pay rent, 607.
  landlord not to be prejudiced by recovery against tenant, 584.
  tenant, how may falsify recoveries of land, 585.
  lease to be void at option of landlord, on conviction of occupant for keeping bawdy house, 708.
LA POINT COUNTY,
  boundaries of, 54.
LARCENY,
  persons guilty of, excluded from right of suffrage, 23.
  in dwelling house, &c., 690.
  stealing from the person, 690,
  simple larceny exceeding $100 in value, 690.
  ib. less than $100, 690.
  jurisdiction of justices in, 690.
LASCIVIOUS BEHAVIOUR,
  punishment for, 708.
LAWS,
  ex post facto, &c., not to be passed, 9, 20.
  style of, 24.
  how passed, 7, 24, 25, 27.
  not to be enacted except by bill, 24.
  no private or local bill, to embrace more than one subject, 24.
  not in force until published, 31, 60.
  what, to be passed by entry of yeas and nays, 33.
  of territory, when to expire, 38.
  common law now in force, to continue until altered, 43, 44.
  rules of construction of, 58, 59.
  when to go into operation, 60.
  publication and distribution of, 61, 62.
  when and how, printed and bound, 61.
  enrolled, not to be taken out of secretary's office, 82.
  ib. to be bound, &c., 83.
  printed copy of, to be deposited in secretary's office, 83.
  foreign, how proved, 523.
  ib. of other states, &c., 523.
  law and fact, when jury shall determine, 712.
  publication of, in Revised Statutes, 741.
  rules for construction of when provisions conflict, 58.
  (See *Statutes, Revised Statutes.*)
LEASES,
  of agricultural lands, limited as to time, 20.
  of improved school lands, 218.
  for more than one year, to be in writing, 388.
  made by order of court in certain cases, to be valid, 422.
  of houses of ill fame, when void, 708.
LEGACIES,
  when executors, &c., may sell real estate to pay, 348.
  given to subscribing witness, when to be void, 354.
  when certain, exempt from payment of debts, 358.
  payment of, 369.
LEGACIES,
  (See *Settlement of Estates of Deceased Persons.*)
LEGAL NOTICES,
  fees for publishing, 676.
LEGATEES,
  deceased, when issue of, to take estate, 357.
  when to hold subject to liability to contribute, 358.
  residuary, when not required to return an inventory, 361.
  proceedings against in certain cases, 554 to 558.
  (See *Settlement of Estates of Deceased Persons.*)
LEGISLATURE,
  number of members of, 23.
  who eligible to, 24.
  each house of, to be judge of qualifications of its members, 24.
  ib. to determine its own rules, and punish for contempts, 24.
  ib. to choose its own officers, 24.
  ib. to keep journal and sit with open doors, 24.
  ib. how long may adjourn without consent of the other, 24.
  where, and how often to meet, 24.
  who eligible and who ineligible as member of, 24.
  when seat of member to be vacated, 24.
  powers and duties of, 23, 24, 25.
  in elections by, members to vote *viva voce,* 25, 78.
  when may borrow money, 32.
  to elect clerks and sergeant-at-arms of each house, 37.
  annual meeting of, when held, 79.
  officers of, not liable to arrest on civil process, 79.
  each house may punish for contempts, and how, 79.
  who may administer oaths to members and officers of, 79.
  to appoint joint committee on printing at each session, 208.
  when may annul contract for incidental printing, 209.
  their power over plank and turnpike road companies, 285, 286.
  may amend or repeal law incorporating manufacturing companies, &c., 288.
  their powers relative to examining corporations, 310.
  (See *Members of Legislature.*)
LEGISLATIVE POWER,
  of *United States*, 5 8, 9.
  of *this state*, where vested, 23.
LEGISLATIVE OFFICERS, 24, 37, 79.
  (See *Legislature.*)
LEGITIMACY,
  of children born before marriage, how established, 398.
  of issue of marriage declared null, 398.
LETTERS OF ADMINISTRATION, 356, 363, 364, 365.
LETTERS TESTAMENTARY,
  on wills, proved and allowed in other states, 356.
  and other proceedings, on the probate of a will, 360 to 362.
  when and to whom to issue, 360.
  ib. when executor refuses to accept, 361.
  (See *Executors.*)
LETTERS, THREATENING,
  to extort money, penalty for sending, 687.
LEVY,
  for the collection of taxes, 150.

LEVY,
ib. of highway taxes, 173.
ib. school taxes, 200, 201.
what property subject to, on executions, 538.
of attachments, on property of defendants, 588
ib. in justices' court, 458.
on execution in justices' court, 469, 472.
to be indorsed by constable on execution, 472.
LEWDNESS,
punishment for, 708.
LIBEL,
truth of, may be given in evidence in criminal prosecutions, 19, 712.
in action for, when no more costs than damages recoverable, 655.
jury to determine law and fact, 19, 712.
LIBERTY OF SPEECH AND THE PRESS,
constitutional provisions relating to, 16, 19.
LIBRARIAN, STATE,
to sell laws deposited in library, 62.
to be appointed by governor, 210.
to execute bond, 210.
his duties, 210.
LIBRARIES AND LYCEUMS,
associations for, how formed, 272.
choice of officers, 272.
certificate to be made and filed, 272.
proprietors of, to be a corporation, 272.
treasurer and collector to give bond, 272.
how and for what purpose proprietors may raise money, 272, 273.
shares transferable, 273.
may hold real and personal estate, 273.
LIBRARY, STATE,
thirty copies of laws to be preserved in, 61.
laws remaining after distribution, to be deposited in, 62.
supreme court reports to be deposited in, 209.
governor to have charge of, 210.
balance of Revised Statutes to be deposited in, 743.
LIBRARIES, SCHOOL,
when appropriation from school fund to be made to, 202.
who may use books from, 202.
how tax may be raised for, 203.
who to be librarians of, 203.
property of, vested in district board, 203.
rules, regulations and penalties respecting, to be prescribed by state superintendent, 89.
fines and penalties, how collected, 203.
union libraries, 203.
LICENSES,
for ferries, who to grant, 96, 184
when moneys received for to be paid over by county treasurer, 109.
for shows and exhibitions, 247.
to sell real estate by executors, &c., 345.
when not to be granted, 346.
to sell real estate by guardians, 350.
to practice as attorney, who entitled to, 441.
LIENS,
of taxes on lands, 144, 163.
how may be discharged, 157, 160.
persons having on lands, may pay taxes and collect same, 163.
costs and charges on tax sales, to be, 166.
costs and charges on strays to be, 250.
state to have, on telegraph lines for taxes, 306.
lien of powers upon lands, 323, 324.
LIENS,
of recorded bonds and contracts relative to land, 331.
of judgments, 469, 535, 651.
creditors having, may or may not be made parties in partition, 571.
lien on undivided share, effect of partition upon, 571.
LIEN OF MECHANICS AND OTHERS,
what property liable for labor and materials, &c., 616.
notice to be given to owner, 616.
extent of lien of sub-contractor, 617.
to continue but one year unless, &c., 617.
petition, what to contain and where filed, 617.
transfer by owner not to affect, 617.
satisfaction of claim, when claimant to enter, 617.
penalty for neglect, 617.
person having claim filed, may recover same by personal action, 617.
execution on judgment for plaintiff, 617, 618.
officer to give notice of sale and execute deed, &c., 618.
lien of persons performing labor on land, timber or lumber, 618.
judgment for plaintiff to be for damages and costs, 618.
liens upon personal property and how enforced, 618.
LIEUTENANT GOVERNOR,
how and when elected, and his term of office, 26.
when to act as governor, 26, 27.
to be president of senate, 27.
to have only casting vote, 27.
his compensation, 27.
first elected, how long to hold office, 44.
entitled to copy of laws, 61.
when to be elected, 64.
when to receive salary of governor, 80.
LIFE ESTATES, 313 to 316.
(See *Estates*.)
LIMITATION,
of the term of leases of agricultural lands, 20.
of actions for the expenses incurred for the support of paupers, 240.
same against drivers of public carriages for leaving horses unfastened, 248.
of prosecutions under act for the protection of hedges, fences, &c., 257.
of successive estates for life, 315.
on chattels real, 315.
of actions to recover real estate sold by executors, &c., in certain cases, 351.
of time, for presenting claims against deceased persons, 371.
of time, for paying debts of deceased persons, &c., 373, 374.
of action against sureties on bond by guardian, 402.
of action against master by apprentice, 405.
of leases of estates of insane persons, &c., 422.
of actions by and against executors and administrators, 552.
of actions relating to real estate, 641 to 643.
actions for recovery of lands, when to be brought, 641.
when avowry of title valid, 641.
when entry not valid, 641.
establishing of title evidence of possession, 641.
when premises deemed to be held adversely, 641.

LIMITATION,
adverse possession, what shall be deemed, 642.
ib. extent of, under naked claim of title, 645.
ib. what shall be deemed such, 642.
possession of tenant, deemed possession of landlord, 642.
right of possession, when not impaired, 642.
provisions in case of disability to sue, 642, 643.
in case of death during disability, 643.
of personal actions, 643, 644.
actions to be commenced within six years, 643.
ib. within two years, 643.
ib. within one year, 643.
ib. within three years, 643.
preceding provisions, when not to apply to promissory notes, 643.
of actions to recover balance of account, 644.
of actions not above limited, 644.
provisions to apply to set-offs, 644.
of actions for penalties and forfeitures, 644.
of actions in courts of equity, 644.
when provisions of chapter 127 to apply, 644.
when bills to be filed in six years, 644.
ib. in ten years, 644.
death or disability of person entitled to file bill, 644.
general provisions, 645, 646.
right of private action not merged in felony, 645.
when persons may sue who were under disability, 645.
aliens in case of war, 645.
limitation as to causes of action accruing without the state, 645.
when plaintiff or defendant die, 645.
time in which new action may be commenced in case of failure, 645.
when cause of action concealed, 646.
rights of joint contractors, 646.
plaintiff to recover of part of joint contractors, 646.
when defendant pleads that others should be joined, 646.
effect of payment and indorsement, 646.
effect of payment by one joint contractor, 646.
judgments in courts of record, when presumed paid, 646.
of actions in criminal cases, 724.
for penalties and forfeitures, 644.
LIQUORS, SPIRITUOUS,
no person to vend without giving bond, 242.
punishment for adulterating, 711.
not to be furnished prisoners, 736.
(See *Spirituous Liquors.*)
LITERARY, &c., INSTITUTIONS,
certain property of, exempt from taxation, 138.
LOANS,
of school and university funds, how made, 220, 221.
amount to be loaned to one person, 221.
interest on, to be at seven per cent, 221.
when to be made, 221.
not to exceed five years, 221.
when may be paid, 221.
not to exceed half the value of mortgaged premises, 221.
persons applying for, to produce abstract of title, &c., 222.
to be paid into state treasury, 222.
how collected on mortgage, 222, 223.
LOGS, TIMBER AND LUMBER, FLOATING, &c.
when drifted on shore, how owner may remove same, 249.
when deemed property of owner of land, 249.
penalty for altering or destroying marks on, 249.
same for converting same, 249.
LOST MONEY AND GOODS,
when and how finder of, to give notice of same, 251.
when to be appraised, 251.
within what time and on what terms owner to have restitution of same, 251.
when finder to pay half the value thereof to town treasurer, 251.
penalty on finder for neglect to give notice, &c., 252.
LOST PAPERS,
certificate of tax sale lost, deed may be issued, 161.
ib. of sale of school lands lost, certified copy may be issued, 214.
instrument lost, when certificate of officer to be evidence of, 525.
bills of exchange and promissory notes lost, how party may recover, 526.
ib. as to other instruments, 526.
LOTS,
in city or village, to be specified in assessment roll, 141.
number of, may be designated by figures, 141.
village, on school lands, how to be sold, 218.
on town plots, how numbered, &c., 257, 258.
in cemeteries, how divided and sold, 270, 271.
LOTTERIES,
legislature not to grant, 25.
punishment for setting up or promoting, 705.
selling tickets or aiding therein, 705.
second conviction, 705.
advertising, 706.
making or selling tickets in fictitious, 706.
defendant to prove genuineness of tickets, 706.
prizes forfeited to state, 706.
LUNATICS,
court may compel specific performance of contracts made by, 422.
when estate of, may be restored, 423.
partition of estates of, 580.
(See *Insane persons.*)
LUMBER,
drifted, 249.
(See *Logs, &c.*)
LYCEUMS,
how organized, their powers and privileges, 273.
to be corporations, 273.
may hold real and personal estate, 273.
MAIMING,
persons, punishment for, 686.
cattle, punishment for, 694.
MAINTENANCE,
of poor persons, 235 to 241.
of bastard child by father, 244 to 246.
of widow and minor children, allowance for, 357.
of wife and children, on application for divorce, 396 to 398.
MAJORITY,
of each house of legislature, to constitute a quorum, 24.

MAJORITY,
- ib. to propose amendments to constitution, and to call a convention to revise same, 36.
- may act in case of joint authority conferred on three or more, 59.
- of all the votes given necessary to choice of senator in congress, 78.

MALICIOUS,
- prosecution, penalty for, 561.
- killing, maiming, &c., cattle, or injuring personal property, 694.
- injury to dams, 694.
- ib. to bridges, roads, turnpike gates, &c., 695.
- ib. to fruit and ornamental trees, glass, &c., 695.
- ib. to monuments, guide boards, buildings, sign boards, &c., 695.
- ib. to lands, 696.

MANDAMUS,
- circuit courts to have original jurisdiction in cases of, 413.
- circuit judges may grant rule to show cause why same should not issue, 639.
- *Of writs of mandamus and prohibition*, 634, 635.
- return to first writ, 634.
- pleadings and proceedings, 634.
- trial of issues of fact, 634.
- damages, &c., 634.
- recovery to bar another action, 634.
- time for return, 634.
- court may impose fine in certain cases, 635.
- payment of, to bar action for penalty, 635.
- writs of prohibition, 635.
- service and return of, 635.
- proceedings when party adopts return, 635.
- ib. if return not adopted, 635
- judgment in same case, 635.
- ib. if return adopted, 636.
- costs in suits on writs of, 657.

MANITOWOC COUNTY,
- boundaries of, 54.

MANSLAUGHTER,
- in first degree, what constitutes, 683.
- in second degree. 683, 684.
- in third degree, 684.
- in fourth degree, 685.
- punishment of, 685, 686.

MANUFACTURING, MINING, MECHANICAL, &c., CO S.
- how may be formed, 286.
- certificate to be made, signed and filed, 286.
- to be a body corporate, and their powers as such, 286.
- amount of real estate that may be held by each stockholder. 286.
- election and powers of trustees, 286, 287.
- not dissolved by a failure to elect trustees on the day fixed, 287.
- trustees to make by laws, appoint officers, &c., 287.
- may make calls of stock, and proceedings thereon, 287.
- stock to be deemed personal estate, and transferable, 288.
- stockholders to be personally liable for services rendered, 288.
- when liable for other debts of corporation, 288.
- persons holding stock as executors, trustees. &c., not personally liable, 288.
- who to represent stock held in trust, and who on pledge, 288.
- stock to be paid in money, 288.
- not to loan money to stockholders, 288.
- legislature may amend or repeal law of incorporation, 288.
- effect of same, 288.

MANUFACTURING, MINING, MECHANICAL, &c. CO S.
- may increase or diminish their capital stock, 289.
- how existing corporations may organize under this chapter, 289.
- how notice to be given in such cases, 289.
- proceedings thereon, 289.
- trustees to cause book to be kept, 289.
- what same to contain, 289, 290.
- to be open to inspection, 290.
- all transfers of stock to be entered therein, 290.
- penalty on officers and company for neglect to keep same, 290.
- not to exercise banking powers, 290.

MAPS,
- of cemeteries, to be made and filed, 270.
- of territory to be incorporated into a village, to be made, 291.
- (See *Plats.*)

MARINERS,
- not to be deemed residents of state, 23.
- when may dispose of their personal estate by nuncupative will, 354.

MARKS AND BRANDS,
- on cattle, &c., when town clerk to record, 254.
- penalty for using those of another, 254.
- same for destroying or altering on animals, 254.
- same on person for marking cattle, &c., of another with his own, 254.
- penalty for destroying marks on logs, timber, &c., 249.
- ib., designating boundaries, 695.

MARQUETTE COUNTY,
- boundaries of, 55.

MARRIAGE,
- of executrix, extinguishes her authority, 361.
- ib., of administratrix, 365.
- a civil contract. 391.
- who shall be capable of contracting, 391.
- who shall not marry or intermarry, 391.
- by whom solemnized, 391.
- ministers to file copy of credentials, 391.
- one of parties to be examined on oath before, 391.
- when consent of parent or guardian necessary to, of a minor, &c., 392.
- no particular form required, 392.
- two witnesses necessary, 392.
- when certificate of, to be given, and what to contain, 392.
- record to be made, and certificate delivered to clerk of circuit court, 392.
- clerk to file and record certificate, 392.
- his fees, 392.
- forfeiture for neglect to make and deliver, or record certificate, 392.
- penalty for solemnizing contrary to law, 392.
- ib., for making false certificate, 392.
- ib., on persons undertaking to marry who are not authorized, &c., 392.
- when not void, though the person officiating is not authorised, 393.
- among Friends or Quakers, 393.
- certificates of, and the record thereof to be evidence, 393.
- what void without decree of divorce, 393.
- when void from the time its nullity is declared, 393.
- when and how suit may be brought to annul, 393, 394.
- when and how proceedings may be had to affirm, 394.

MARRIAGE.
sentence of imprisonment for life to dissolve, 394.
of female ward, terminates guardianship, 402.
of woman after suit brought, husband may be joined, 509.
MARRIED WOMAN,
when lands of, sold for taxes, may be redeemed, 161.
legal settlement of, 235.
when may bring suit on bond given for sale of spirituous liquors, 242.
a power may be given to, for certain purposes, 321, 322.
may execute same, 324.
how to ackowledge same, 324.
authority to create estate under power, 325.
how acknowledgment of execution of deed by, to be taken, 327, 328.
defendant in ejectment, 567.
(See *Wife*.)
MARSHALL,
of village, how elected, 294.
to execute bond, 300.
his powers and duties in the collection of taxes, 300, 301.
his compensation, 300.
United States, to be appointed for district of Wisconsin, 791.
his duties and compensation, 791.
MASTERS AND APPRENTICES,
infants may bind themselves as apprentices, &c., and for what term, 404.
consent, by whom to be given, 404.
how consent to be signified, 404.
indentures, 404.
parent or other person may become a party with the minor, 404.
age of minor to be inserted in the indenture, 404.
counterpart, where to be deposited, 404.
provisions for benefit of minors, to be inserted, 404, 405.
provisions when minor bound for less than three years, 405.
moneys, &c., paid by master, to be for use of minor, 405.
who to inquire into treatment of apprentices and defend them, 405.
complaint against master for misconduct, 405.
when court may discharge minor and award costs against master, 405.
when costs to be awarded against complainant, 405.
master, when liable to action, 405.
damages recovered, how disposed of, 405.
within what time action to be commenced, 405.
if judgment rendered for plaintiff, minor may be discharged, 405, 406.
proceedings if apprentice or servant leave the service of his master, 406.
justice may order offender to be returned, or may commit him, 406.
effect of warrant, 406.
who to pay costs, 406.
time wilfully lost shall be returned by apprentice, &c., 406.
complaint against apprentice for misbehavior, and proceedings thereon, 406.
when court may discharge master from indentures, &c., 406.
minor discharged by death of master, &c., 406.
apprentice not to be bound not to set up trade, &c., 406, 407.
MASTERS AND APPRENTICES,
provisions relating to masters, to apply to mistresses, 407.
common law, right of father not affected, 407.
mother of illegitimate child may consent to binding, 407.
an act of congress respecting persons escaping from service of masters, 798 to 800.
MASTER IN CHANCERY,
office abolished, 31.
certain sales made by, confirmed, 761, 762.
MAYHEM,
punishment for, 686.
MEASURES, STANDARD, 260, 261.
(See *Weights and Measures*.)
MECHANICS' LIEN, 616 to 618.
(See *Lien of Mechanics*.)
MEDICAL SOCIETIES,
county, how formed, 231.
to be bodies corporate, 231.
may purchase and hold real and personal estate, 231.
may make by-laws, 231.
may grant diplomas, 232.
examinations for diplomas and membership, 232.
who permitted to be examined as candidates for same, 232.
may make assessments on members, 232.
duties of president and vice president, 232.
of treasurer, 232.
of recording and corresponding secretaries, 232, 233.
how moneys drawn from the treasury, 232.
when physicians of one county may unite with those of another, 233.
any person may practice, though not a member of, 233.
those heretofore organized, to be continued, 233.
state, to be continued, 233.
may adopt constitution and by-laws, 233.
representation of county societies in, 233.
may grant diplomas, 233.
may elect members, 233.
appeals to, allowed from county societies, 234.
property of societies exempt from taxation, 234.
MEETING HOUSES,
exempt from taxation, 139.
MEETINGS, RELIGIOUS,
penalty for disturbance of, 709.
MEMBERS OF CONGRESS,
election of, 6.
compensation, privileges and disabilities of, 7, 24.
when two to be voted for at same election, how ballot to designate each, 68.
when chosen, 77.
if they resign, or a vacancy occur in office, notice to be given to secretary of state, 77.
Wisconsin entitled to three, 794.
MEMBERS OF LEGISLATURE,
number of, 23.
how and when chosen, 23.
who eligible as, 24.
not to be elected or appointed to certain civil offices, 24.
who ineligible as, 24.
when seat of to be vacated, 24.
not liable for words spoken in debate, 24.
compensation of, 25.
when to vote *viva voce*, 25, 78.
when may administer oaths, 80.
See *Legislature*.)

- MEMORANDUM,
  - of contract, subscribed by parties, when required, 389.
  - made by auctioneer, effect of, 389.
- MENACE,
  - of elector, punishment for, 132.
  - to extort money, punishmnnt for, 687.
- MERGER,
  - expectant estates not defeated by, 316.
- MERCHANTS,
  - when partners, how taxed on partnership property, 140.
  - when each partner liable for whole tax, 140.
- MESNE PROFITS,
  - how recovered by plaintiff in ejectment, 567.
- MESSENGERS,
  - special, when secretary of state may dispatch 73, 75.
  - when governor may appoint, 74.
  - duties of, 74, 75.
  - their compensation, 76.
  - penalties imposed on, for violating election laws. 131.
- MILEAGE,
  - of members of legislature, 25.
- MILITIA,
  - congress to provide for calling forth, organizing, &c., 8.
  - legislature to determine what persons shall constitute, 25.
  - may provide for organizing and disciplining same, 25.
  - not to be called out on election day, 132.
  - (See *Uniform Companies.*)
- MILLS,
  - grist, regulation of rates of toll at, &c., 262.
  - how dower assigned in, 331.
  - malicious injury to, 694, 695.
- MILLERS,
  - how to grind grain, 262.
  - penalty for voilating law relative to grinding grain, 262.
- MILL DAMS,
  - malicious injury to, 694, 695.
- MILWAUKEE COUNTY,
  - boundaries of, 55.
- MINERAL,
  - certificate of sale of school lands, not to confer the right to carry off, 213.
  - penalty for digging or carrying away from school land, 696.
  - ib., from lands of individuals, 696.
- MINISTERS,
  - of the gospel, may be elected president of religious society, 265.
  - their powers and duties as such, 265, 266, 268.
  - compensation of, to be fixed by majority of society, 267.
  - may solemnize marriages, 391.
  - to file credentials, 391.
  - may have access to prisoner, 736.
- MINORS,
  - when lands of, sold for taxes may be redeemed, 161.
  - legal settlements of, 236.
  - limitation of certain actions, not to affect, 351.
  - provision for the support of, under seven years of age, 380.
  - appointment of guardians for, on partition, 381.
  - when not to marry without consent of parent or guardian, 392.
  - provision for, on application for divorce, 396, 398.
- MINORS,
  - when parents entitled to custody of, 399.
  - when expenses of education may be defrayed from income of their property, 399.
  - guardians for in partition suits, 572.
  - (See *Infant, Guardians, Next Friend.*)
- MISDEMEANORS,
  - removing pauper without legal authority, 239.
  - vending or giving away spirituous liquors without executing bond, 243.
  - setting up or exhibiting show or exhibition without license, 247.
  - injury to fruit trees, vegetable productions, &c., 257.
  - wilful trespass in cemetery, 271.
  - breach of law in regard to manufacturing corporations, &c., 290.
  - injuring telegraph lines, 306.
  - neglect to deliver will to probate court, 355.
  - undertaking to join others in marriage without authority, 392, 393.
  - justice and constable purchasing demands for prosecution, 481.
  - justice purchasing judgment rendered by him, 481.
  - what acts and omissions to be, 623.
  - not delivering books and papers to successor in office, 624, 636.
  - for imprisoning person discharged on habeas corpus, 631.
  - other offences prohibited by habeas corpus act, 632.
  - taking fees not due, 677.
  - wilful injury to trees, cutting timber and carrying away wood, mineral, &c., 696.
- MISNOMER,
  - when not to vitiate sale of lands for taxes, 159.
  - of corporation, to be pleaded in abatement, 593.
  - no costs on judgment for, to be allowed, 657.
- MISSISSIPPI RIVER,
  - and the navigable waters leading into the same, to be common highways and free, 33.
  - jurisdiction in common, of certain counties on, 94.
  - licenses to keep ferries on, may be extended to ten years, 184.
- MONEY,
  - congress to coin and regulate value of, 8.
  - how drawn from treasury of United States, 9.
  - public, collected for a specific object, not to be applied to another, 165.
  - paid on account of school lands, to be in specie, 216.
  - lost, 251.
  - rate of interest on, 264.
  - of account, what to be, 264.
  - (See *Lost Money and Goods.*)
- MONTH,
  - definition of, 59.
- MONUMENTS,
  - in cemetery, injury to, a misdemeanor, 271.
  - other monuments, punishment for injuring or removing, 695.
- MORALITY,
  - offences against, 707 to 710.
- MORTGAGEES,
  - liability of, for neglect to discharge mortgage, 331.

- MORTGAGEES,
  - may acquire interest of purchaser at sale on execution, 549, 550.
  - not to maintain ejectment, in what cases, 569.
- MORTGAGES,
  - to be taken to secure purchase money on school lands, 35, 213.
  - on loan of school moneys, how taken, 221, 222.
  - to be deemed recorded from date, 221.
  - applicant to pay expenses of, 221.
  - how cancelled, 222.
  - how moneys collected on, 222, 223.
  - form of, 223.
  - by party having power to lease, &c., not to extinguish power, 322.
  - effect of on power, 322.
  - power to sell contained in, to vest in assignee, 326.
  - recording assignment of, not notice to mortgagor, 329.
  - how may be discharged, 330, 331.
  - executed on lands for purchase money, 333.
  - when interest in, to be considered assets, 368.
  - made by order of court in certain cases to be valid, 422.
  - *foreclosure of, in chancery,* 423 to 425.
    - when no proceedings at law shall be had for recovery of money due on, 423.
    - when execution may issue for such moneys, 423.
  - *foreclosure of by advertisement,* 619 to 622.
    - certain mortgages may be foreclosed by advertisement, 619.
    - requisites to entitle party to foreclose, 619.
    - installments to be considered separate mortgages, 619.
    - notice, how given, 619.
    - what to specify, 619.
    - sale, how, where, and by whom made, 619, 620.
    - how postponed, 620.
    - distinct tracts, &c., to be sold separately, 620.
    - mortgagee, &c., may purchase, 620.
    - certificate of sale to be given to purchaser, 620.
    - duplicate to be filed, 620.
    - redemption by mortgagor, 620.
    - how long mortgagor may retain possession of premises sold, 620.
    - deed to purchaser, when and how to be executed, 620.
    - surplus money to be paid to mortgagor, 621.
    - proceedings to perpetuate evidence of sale, 621.
    - effect of affidavits, &c., as evidence, 621.
    - duty of register, 621.
    - what shall be sufficient to pass title, 621.
    - subsequent mortgagee may satisfy prior mortgage, 621.
    - when mortgagee bids in, no conveyance necessary, 621, 622.
    - taxing costs on foreclosure, 660.
    - notice of sale by virtue of mortgage, 676.
    - proof of service of notice, how certified and recorded, 676.
- MORTGAGES, CHATTEL, 254, 389.
  - (See *Chattel Mortgages.*)
- MOTHER,
  - when to support her poor children, 236, 237.
  - of bastard child, to be a witness, 245.
  - when may recover on order of court, 246.
  - when to inherit, and how, 338.
- MOTHER,
  - of illegitimate child, may consent to binding same, 407.
  - concealing death of bastard, punishment for, 708
  - offence may be inserted in indictment with charge of murder, 708.
- MUNICIPAL AND INFERIOR COURTS,
  - may be established, 28.
  - jurisdiction to be limited, 28.
  - judges of, to be elected, and their term of office, 28.
- MURDER,
  - in the first degree, what to constitute, 682.
  - punishment for, 682.
  - in the second degree, and punishment, 682.
  - in the third degree, and punishment, 682.
  - in a duel, 685.
  - second in a duel, to be guilty of, 685.
  - assault with intent to, 686.
  - attempt to, by poison, 686.
- MUTUAL ACCOUNTS,
  - open, how affected by statute of limitations, 644.
- NAME,
  - fictitious, when defendant may be sued by, 445, 495.
  - ib. of parties in actions of ejectment, abolished, 562.
  - ib. affixing to instrument, how punished, 699.
- NATURALIZATION,
  - congress to establish uniform rule of, 8.
  - of aliens, an act relative to, 794 to 798.
- NATURE,
  - crime against, how punished, 709.
- NAVIGABLE,
  - waters, certain to be common highways, 33.
  - rivers and streams, penalty for obstructing, 182.
  - rivers, what to be deemed, and to what extent, 248.
- NE EXEAT,
  - awarding writ of, 412.
  - by whom and how may be granted, 425.
  - when discharged, 425.
- NEGLECT,
  - of relatives to comply with order to support poor persons, proceedings upon, 237.
  - to provide for wife, when cause for divorce, 395.
  - of duty, by public officers, how punished, 702.
  - of sheriffs and constables to make certain complaints, how punished, 244, 707.
- NEW TRIAL,
  - when may be granted on suits commenced by attachment or replevin, 468.
  - in ejectment, 566.
  - in criminal cases, 728.
- NEXT FRIEND,
  - for infant, to be appointed in justice's court, 448.
  - form of consent, 448.
  - for infants in courts of record, 497.
  - when to give bond, 497.
- NEXT OF KIN,
  - when and how to inherit, 338.
  - entitled to letters of administration, 363.
  - when may bring suit to recover share of personal estate, 383.
  - proceedings against, 554.
  - (See *Actions.*)
- NON COMPOS,
  - persons, disqualified from voting, 23.
  - (See *Idiots, Insane Persons.*)

NON-RESIDENTS,
  what personal property of, taxable, 140.
  guardians, 350.
  minors, &c., 403.
  defendants, proceedings in chancery, 415, 417.
  of county, to give security for costs in justices' courts, 444.
  to file security for costs, 501, 658.
  party, when may have his deposition taken, 523.
NON-SUIT,
  judgment as in case of, may be moved for, 504.
  not after verdict, 534.
  costs on, 655.
NOTARIES PUBLIC, 90.
  to be appointed by the governor, and considered state officers, 90.
  their term of office, 90.
  to take oath and give bond, and provide official seal, 90.
  their general powers and duties, 90, 91.
  their certificate, &c., to be evidence, 90, 91.
  to keep record of protests, &c., 91.
  where their records and papers to be deposited, 91.
  liable to damages and criminal prosecution for misconduct, 91.
  removal from county to vacate their office, 91.
  faith and credit to be given to their official acts, 92.
  when may administer oaths in certain cases, 430, 431.
  their fees, 671.
NOTES, PROMISSORY, 262, 503, 504.
  form of, to be taken on loan of school moneys, 223, 224.
    (See *Bills of Exchange and Promissory Notes.*)
NOTES OF BANKS, 256, 539, 697.
    (See *Bank Bills.*)
NOTICE,
  how may be served on sheriff, 106.
  for special town meetings, how to be given, 120, 121.
  of annual town meeting, not necessary, 121.
  of election, to town officers, what to be deemed, 123.
  of tax sales, 158.
  of sale of unredeemed lands, 160.
  of application to lay out roads, 175.
  of precaution, may be posted on bridges, 183.
  of formation of school districts, 188, 189.
  of sale of school lands, 211.
  to be given by supervisors in proceedings relative to support of poor, 239, 240.
  by passenger, of intoxication of driver, 248
  to be given on taking up of stray, 249, 250.
  on finding lost money and goods 251.
  of unclaimed property, 252.
  of sale of same, when and how given, 252, 253.
  to alter or vacate town plats, 259.
  of organizing religious socities, and of elections therein, 265, 267.
  to sell real estate of same, 268.
  of elections by cemetery associations, 271.
  of meeting to form library and lyceum associations, 272.
  of place where office of road company shall be kept, to be given, 281.
  of election of trustees of manufacturing corporations, &c., 287.
NOTICE,
  to increase or diminish their capital stock, &c., 289.
  of application to court for incorporation of village, 291.
  of meeting of electors to determine same, 292.
  of forfeiture of lots sold for taxes, 302.
  of sale of lands by executors, &c., 346, 347.
  of time and place of proving will, 355.
  to be given by persons appointed to examine claims of deceased persons, 369.
  of time limited for payment of debts of deceased persons, 375.
  of examining accounts of executors and administrators, 379.
  of hearing, on proceedings by executors, &c., to convey real estate, 385.
  of attachment in justices' courts, 458.
  of proceedings in probate court, when judge shall order, 433.
  of tender, to officer, 502.
  with general issue, 502.
  of set-off, to be pleaded or given, 506.
  when may be given by or to agent or attorney, 516, 528.
  for taking depositions, how served, 517.
  proof of publication of certain, 524.
  of sale on execution, how given, 540, 543, 544.
  to be subjoined to declaration in ejectment, 563.
  of sale in partition suits, 577.
  of filing bail bond, 501, 659.
  of taxation of costs, 660.
  fees for publishing insolvent, 676.
  form of, 676.
  of sale of mortgaged premises, when and how served, 676.
NUISANCE,
  proceedings to remove, destroy and prevent, 229, 230.
  private actions for, 583.
  judgment in action for, 583.
  execution and warrant, in case of judgment that nuisance be abated, 583.
  how warrant may be stayed, 583.
  expense of removing, how collected, 584.
  equity jurisdiction in matters concerning, 584.
NULLITY,
  of marriage, when may be decreed, 393, 394.
    (See *Divorce.*)
NUMBER,
  words importing singular or plural, how may be applied 59.
NUNCUPATIVE WILL,
  how made and proved. 354.
    (See *Wills and Testaments.*)
OATHS,
  official, of president, 10.
  of members of the legislature, and executive and judicial officers, 25.
  by whom may be administered, 44.
  who may administer to members and officers of legislature, 79.
  to be taken by county officers and their deputies, 114.
  neglect to take to vacate office, 115.
  of commissioners to make partition, 573.
  of office, fee for taking, 678.
  generally, definition of, 59.
  chairman of supervisors may administer, 97.
  when senators and members of assembly may administer, 80.
  ib. court commissioners, 104, 762.

OATHS,
when assessors may administer, 144, 145.
when supervisors may administer, 178.
of title, to be made by person applying for loan of school moneys, 222.
may be taken by commissioners to take acknowledgment of deeds in other states, 332.
may be taken by commissioners to examine claims, &c., 370.
by judges of probate, 429, 431.
by justices of the peace, 430, 431, 454.
courts may administer, 438.
by whom generally, 529.
OBSCENE,
books, &c., punishment for selling, &c., 709.
ib. justice may issue search warrant for, 709.
prosecutor to receive part of fine, 709.
OBSTRUCTING,
highway or ditch, penalty for, 180.
OCCUPANT,
how assessed for highway taxes, 171, 172.
when to remove encroachment on highways, 181.
penalty for neglect, 181.
when to pay costs and when allowed damages, 181, 182.
to remove tree fallen into highway, and penalty for neglect, 182.
OFFENCES,
rights of person accused of, 681.
against the lives and persons of individuals, 682 to 688.
killing of a human being what to be, 682.
(See *Murder, Manslaughter, Homicide.*)
against property, 688 to 697.
against public justice, 700 to 703.
against the public peace, 703 to 705.
against public policy, 705 to 707.
against chastity, morality and decency, 707 to 710.
against public health, 711.
proceedings to prevent the commission of, 717.
criminal, how complaint of made, 719.
duty of magistrate thereon, 719.
what liable, 721.
indictments for, 724.
trials for, 726.
judgments for, 729.
OFFENDERS,
arrest and examination of, 719 to 723.
(See *Prisoners.*)
OFFICERS,
elective, of legislature, 37.
how to be elected or appointed in counties, towns, &c , 37.
holding office under the United States or the territory to continue, &c., 38.
county and town, under territory, how long to hold, 38, 39.
state, first elected, how long to hold office, 44.
of state, to maintain and defend its sovereignty and jurisdiction, 50.
words giving joint authority to three, construed as giving same authority to majority, 59.
what, entitled to copy of laws, 61, 62.
if elected to fill vacancies, when may enter upon duties of their office, and how long to hold, 76.
state and county, when to be elected, 76.
of state, 80.
at what time to make their annual reports, 90.
appointed to fill vacancies, to qualify, 116, 117.
OFFICERS,
when appointed to fill vacancies, how long to continue in office, 117.
losses sustained by default of, how collected, 163, 164.
penalty on, for not keeping distinct fund separate, 165.
penalties imposed on, for violating election laws, 131, 132.
judicial, when not to receive fees, give advice or draft papers, 441.
of court, privileged from arrest, 441.
certificate of, when to be evidence of loss of instrument, 525.
of corporations, may be witnesses, and answers how far evidence, 597.
when liable for taking insufficient sureties, 602.
to set up table of fees, 676.
receiving fees to give receipt for, 678.
bribing of executive, legislative or judicial, 701.
accepting bribes by, 701,
suffering escape of prisoner, 702.
refusing to arrest, 702.
punishment for refusing to aid, 702.
falsely assuming to be justice or officer, 703.
taking rewards for omitting duty, 703.
duty to suppress unlawful assemblies, 703.
authorized to keep peace, 717.
authorized to issue process to arrest, &c., 719.
duty of, when convict is pardoned or sentence commuted, 731.
fees allowed one, to be allowed another, for same services, 678.
OFFICES,
who disqualified from holding, 36, 37.
when legislature may declare same vacant, and manner of filling same, 37.
regular term of state and county, when to commence, 76.
county, where to be kept, and when same to be open, 113.
vacancies in, how may be filled, 76, 116, 117.
accounts in public, in what currency to be kept, 264.
ORCHARDS,
when road not to be laid through, 175.
penalty for injuring fence inclosing same, 256.
ib., for committing wilful trespass in, 695.
ORDERS,
county, 96, 97, 109, 150.
of boards of health to be published, 229.
for support of poor, how made and enforced, 237, 238.
of reference in chancery, 419.
in chancery, how enforced, 419.
of justice to bring up prisoner, form of, 491.
of probate courts, how may be enforced, 429.
presumption in favor of, in probate courts, 430.
to be made in open court in certain cases, 437.
to file security for costs, 501, 658.
ORDINANCE OF 1787, 773 to 778.
ORGANIC LAW OF TERRITORY OF WISCONSIN, 778 to 785.
acts to alter and amend same, 785 to 787.
ORNAMENTS,
of widow, to be allowed her, 362.
OVERSEERS OF HIGHWAYS,
need not be chosen by ballot, 122.
their general duties, 168.
when may make another assessment, 168.

OVERSEERS OF HIGHWAYS,
  to maintain guide posts, 169.
  may procure scraper and plow, 169.
  to be paid for excess of labor over their taxes, 169.
  not allowed to pay their own tax in money, 169.
  may cut ditches and dig gravel on adjoining lands, 169.
  duty of, when road impassable, 169.
  to grant certificate for excess of labor over tax, 169.
  when supervisors may appoint, 170.
  penalty for neglect of duty, 170.
  when to deliver list of inhabitants to town clerk, 170.
  penalty for neglect, 170.
  to add names of persons omitted to tax list, and to assess same, 171.
  when to cause highway taxes to be expended, 172.
  to give notice to work, 172.
  may require tools, teams, &c., to be furnished, 172.
  when to collect tax in money, and how, 173.
  their fees on collections, 173.
  may deliver tax list to constable, 173.
  may re-issue same, 173.
  to designate names of delinquents and indorse warrant, 173.
  how to apply road moneys, 174.
  when and how to make return of lands on which taxes are paid, 174.
  penalty for neglect, 174.
  when and how to render account, 174, 175.
  when to pay over road money into town treasury, 175.
  when liable for damages occasioned by insufficiency of road or bridge, 183.
OVERSEERS OF POOR,
  town supervisors to be, 126.
  (See *Poor*, *Town Supervisors.*)
OWNER,
  of public carriages, duties and liabilities of, 247, 248.
  of mischievous animal, wilfully suffering to go at large, &c , 684.
OWNERSHIP,
  of property stolen, embezzled, &c., what deemed proof of, 713.
PAPERS AND BOOKS,
  compelling delivery of, by public officers, 624.
  (See *Books.*)
PARDONS,
  governor may grant, 26, 731.
  duty of officer thereon, 731.
PARENTS,
  bound to support children, 236.
  when consent of parent necessary to marriage of minor, 392.
  when parent entitled to custody of minor child, 399.
  parent may sign indentures with child, 404.
PARTY,
  may appear in court in person or by attorney, 441.
  when may be sworn as witness, 523.
  stockholders, &c., may be made with corporation, 596.
  calling for jury in county court, to advance fees, 674.
  fees allowed to, on recovering judgment, when attorney or solicitor employed, 674, 675.
PARTITION,
  and distribution of estates in probate courts, 380 to 383.
PARTITION,
  when judge of probate may appoint commissioners and issue warrant for, 380.
  proceedings when real estate lies in different counties, 380
  notice of application for, 381.
  when shares have been conveyed, 381
  how shares set out 381.
  when whole estate may be assigned to one of the parties, 381.
  when parcel may be assigned to one of parties, 381
  when estate of deceased lies in common, &c., 381.
  guardians to be appointed for minors, &c., and agents for non-residents, 381.
  report of commissioners, &c., 382.
  when partition may be dispensed with, 382.
  questions relating to advancement, how determined, 382.
  appeal from decree for, &c., 382.
  when partition conclusive, 382.
  when expenses of, to be paid out of estate, 382.
  when to be paid by parties, 382.
  of reversion, when may be made, 382, 383.
  when agent may be appointed for non-resident, 383.
  agent to give bond, 383.
  of estate of ward, guardian may assent to, 401.
  of lands owned by several persons, in circuit courts in chancery, 570 to 581.
  who may have, 570.
  suits how instituted, 570.
  by whom may be maintained, 570.
  bill to be verified, and what to set forth, 570.
  who may be made parties, 571.
  unknown parties and uncertain interests, 571.
  creditors having lien need not be made parties, 571.
  effect of, upon lien on undivided share, 571.
  creditor having specific lien may be made party, 571.
  subpœna to appear and answer, 571.
  unknown and non-resident parties, how notified, 571.
  order to take bill as confessed against same, 571.
  guardians for minors, &c., 572.
  bond to be given by guardian, 572.
  on failure to give bond, clerk to be appointed, 572.
  when issue of fact to be tried by jury, 572.
  court may permit bill, &c., to be amended, 572.
  rights of parties affected by amendment, 572.
  reference to take proof of title, 573.
  rights of parties, how ascertained, and decree, 573.
  decree in case the rights of some of the parties do not appear, 573.
  reference to inquire into situation of premises, 573.
  commissioners to make partition to be appointed, 573.
  vacancies, 573.
  oath of commissioners, 573.
  how partition to be made, 573.
  report of commissioners, 574.
  all to meet, &c., 574.
  fees and expenses, 574.
  setting aside report, 574.
  decree on confirmation of report, 574.
  persons and cases not affected, 574.

PARTITION,
when sale may be ordered, 574.
order to direct terms of credit, 575.
credits, how secured, 575.
separate securities, 575.
to whom to be delivered, 575.
creditors having specific lien to be made parties before order for sale, 575.
certain moneys to be brought into court, 575.
application for moneys brought in, 575.
proceedings on application, 576.
distribution of moneys among creditors, 576.
clerk to procure discharge of incumbrances, 576.
other parties not to be delayed, 576.
sale of dower or other life estate in premises, 576.
payment to owner of life estate, &c., with his assent, 576.
proceedings, if consent be not given, 577.
proportions to be invested, how ascertained, 577.
in case of dower, 577.
estate for life, 577.
rights of unknown owners to be protected, 577.
notice of sale by sheriff, 577.
sale, how conducted, 577.
sheriff and guardians not to purchase, 577.
report of sale, 577.
order for conveyances, 577.
conveyances to be recorded; their effect, 577.
effect of, upon rights of creditors, 578.
costs and expenses of proceedings, 578.
distribution of proceeds, 578.
shares of known infants, 578.
ib. of unknown infants, 578.
tenants in dower or for life, &c., 578.
security to refund, 578.
in what names to be taken, 578.
clerk to receive and apply moneys and render account, 578.
investment how made, 579.
suits on securities, 579.
costs of partition how assessed and collected, 579.
sale of premises of unknown owner valid, 579.
costs against complainants on dismissal of bill, 579.
appeal, 579.
of estates of infants by guardians, 579.
report of guardian and order for conveyances, 580.
effect of deeds; infants, wards of court, 580.
if infant a married woman, husband to be guardian, 580.
by guardians of lunatics, 580.
releases, when to be authorized, 580.
effect of same, 580.
when state is interested, 580.
service of subpœna, &c., on attorney general, 580.
claims barred by limitations, 581.
compensation for equality of, 581.
PARTNERS,
how taxed on partnership property, 140.
when each liable for whole tax, 140.
judge not to have, practicing in his court, 440.
partner of a justice, being an attorney, not to practice before him, 442.
allegation in pleading that parties are, when taken to be true, 528.
PATENTS,
for school lands, when to issue, 213, 214.
may be recorded and effect thereof, 224.
PATENTS,
to be issued by governor for lands granted for the improvement of Fox and Wisconsin rivers, 772.
PAUPERS,
relief and support of, 235 to 241.
(See *Poor.*)
PAYMENT,
of debts and legacies of deceased persons, 369 to 378.
limitation of time for, of debts of deceased persons, 373.
order of, 374.
of dividend to creditors in case of insolvent estates, 374.
decree for, may be suspended in case of appeal, 374.
of contingent claims against deceased persons, 375, 376.
PEACE,
what officers to preserve, 105, 717.
circuit judges to be conservators of, 412.
recognizance, &c., to keep, 717 to 719.
(See *Crimes.*)
public, offences against, 703 to 705.
PENALTIES AND FORFEITURES,
imposed by towns, not to exceed ten dollars, 119.
may be recovered before justices of the peace, 119.
for violating election laws, 131, 132, 133.
on town treasurer, for failure to settle or pay over moneys, 164.
for cohabitation after divorce, 398.
for violating law in relation to marks and brands, 254.
same in relation to unauthorized banking, 255, 256.
same to be paid into county treasury, 256.
on person for injuring hedges, fences, fruit and ornamental trees, &c., 256, 257.
for violating law relating to town plots, 259.
on sealers of weights and measures, for neglect of duty, 261.
for violating provisions of law relative to plank and turnpike road companies, 284, 285.
corporations may impose, 307.
for neglect to deliver will to probate court, 355.
on justice, for acting before qualified, 481.
on justice and constables, for violation of certain statutes, 481.
on clerk, for fraud in drawing jurors, 515.
ib. for neglect to docket judgment, 536.
on person keeping record of shares of stock, for neglect, 542.
on officer, for making irregular sale on execution, 543.
for taking down or defacing notice of sale, 544.
for malicious prosecution, 561.
on jurors and witnesses, for not appearing, 608.
collection of, 622.
what may be recovered by action, 622.
how actions brought and conducted, 622.
pleadings in such actions, 622, 623.
recovery of, by indictment, 623.
when act or omission to be a misdemeanor, 623.
when and how chairman of supervisors to prosecute for, 623.
other officers to give notice to supervisors, 623.
when supervisor to notify district attorney, 623.

PENALTIES AND FORFEITURES,
  duties of district attorny in relation to prosecutions for, 623.
  moneys collected, how disposed of, 623.
  payment over how compelled, 623.
  on officer for refusing writ of habeas corpus, 627.
  for refusing to deliver books and papers, 636.
  limitation of actions for, 644.
  on officers for not setting up table of fees, 677.
  for taking fees not due, 677.
  for violating law relative to prisons, 736, 738.
  (See *Fines and Forfeitures.*)
PEREMPTORY CHALLENGE,
  of jurors, 515, 726.
PERISHABLE PROPERTY,
  when unclaimed, how disposed of, 253.
  ib., taken under attachment, 458, 591.
PERJURY,
  false swearing at elections to be, 131.
  grand jurors may be required to testify in relation thereto, 513, 514.
  of insolvent debtor, to avoid discharge, 651.
  punishment of, 700.
  what deemed, 700.
  subornation of, 700.
  inciting to commit, 700.
  disqualification on conviction of, 700.
  proceedings, when perjury is suspected by court, 700.
  copies of papers, &c., may be taken, 700.
PERPETUATING TESTIMONY, 519 to 522.
  (See *Testimony.*)
PERSON,
  every one entitled to a certain remedy in the laws, 20.
  definition of, 59.
  rights of persons accused, 681, 682.
  offences against persons, 682 to 688.
PERSONAL PROPERTY,
  what to include for purposes of taxation, 138.
  what exempt from taxes, 138, 139.
  mortgaged, to whom taxable, 140.
  how taxes on, may be collected, 155.
  consigned or deposited, to be entered in book by consignee or bailee, 252.
  shares in plank and turnpike road companies to be, 281.
  ib., in manufacturing, &c., corporations, 288.
  who may bequeath, 353.
  of deceased persons, first liable for payment of debts, 367.
  fraudulent conveyances and contracts relative to, 388, 389.
  of wards, how appraised and disposed of, 401, 402.
  when bound by execution, 539.
  sale of, on execution, 541.
  what exempt from levy and sale, 540, 541.
PERSONATING ANOTHER,
  punishment for, 703.
PETITION,
  right of, shall not be abridged, 19.
  by executors, &c., for license to sell lands, 345.
  for divorce, 394, 395.
  for appeal from probate court, 432.
  for sale of lands to satisfy lien of mechanics, 617.
  for habeas corpus, 626.
  by insolvent debtors for discharge, 647.
PEWS AND SLIPS,
  exempt from taxation, 139.
  how deeds of may be recorded, 329.
  exempt from execution, 541.
PHYSICIANS,
  may form medical societies, 231.
  any person may practice as, though not a member of a medical society, 233.
  when not compelled to disclose as a witness, 526.
  prescribing when intoxicated, punishment for, 711.
PLAINTIFFS,
  effect of allegation of partnership of, in in pleadings, 528.
  when shall recover costs, 654, 655.
  in circuit court to advance fee on swearing jury, 674.
PLANK AND TURNPIKE ROAD COMPANIES,
  how may be formed, 273, 274.
  to be bodies corporate and their powers, 274.
  when five per cent to be paid on stock subscribed, 274.
  business to be conducted by a board of directors, 274.
  how same elected, 274.
  not dissolved if directors not elected on the day fixed, 274.
  their powers, 275.
  may make by-laws, 275.
  how may enter upon and take lands, 275.
  survey of roads to be made and recorded, 276.
  when may construct road, 276.
  when and how parties may appoint appraisers, 276.
  when and how judge may appoint commissioners to appraise damages, 276.
  proceedings of same in assessing damages, 276, 277.
  when they shall appoint persons to represent parties interested, 277.
  how persons so appointed to be regarded, 277, 278.
  powers and duties of commissioners, 278.
  their fees, 278.
  witnesses may be subpœnaed to attend before same, 278.
  appeal allowed to circuit court from their appraisal, 278.
  when company shall pay the damages and may take lands, 278.
  when award may be paid to county treasurer, and lands taken, 278, 279.
  affidavits, orders and awards to be filed and recorded, 279.
  how, in case of appeal, company may take lands, 279.
  how shall construct their roads, 279.
  when gates may be erected, 280.
  rates of toll, 280.
  who exempt from same, 280.
  when and how location of gate may be changed, 280.
  when and how payments of stock may be compelled, 281,
  shares to be personal property, 281.
  how capital stock may be increased, 281.
  notice to be given where office of company is to be kept. 281.
  where papers may be served on company, 281.
  book to be kept by secretary, and what to contain, 281.

PLANK AND TURNPIKE ROAD COMPANIES.
- to be kept open for public inspection, and to be evidence, 281, 282.
- penalty for neglect, 282.
- individual liability of stockholders, 282.
- contribution may be compelled, 282.
- debts not to exceed fifty per cent of capital paid in, 282.
- stockholders may be sued jointly with company, 282.
- execution how issued, and when judgment for stockholder, 283.
- when suit may be brought against one or more stockholders, 283.
- directors to report annually, 283.
- justices of the peace to be inspectors of roads, 283.
- when may order gate thrown open, 283, 284.
- when gate shall be open, and when closed, 284.
- proceedings, when place out of repair is nearest to gate in adjoining county, 284.
- when and how company may appeal from decision of justices, 284.
- powers and duties of county judge thereon, 284.
- penalty on gate-keeper for certain offences, 284.
- fees of judge and justice, and by whom paid, 284.
- how collected when payable by company, 284.
- penalty for delaying traveler or demanding too much toll, 285.
- when judgment against toll gatherer may be recovered of corporation, 285.
- list of rates of tolls to be posted at gates, 285.
- when gate-keeper may detain, 285.
- liable for damages for not keeping road in repair, 285.
- penalty for injury to road, &c., 285.
- penalty for passing or avoiding gate without payment of toll, 285.
- when company shall cease to exist, 285.
- liable to visitation, &c., 285.
- power of legislature over same, 286.
- not to exercise banking powers, 286.

PLATS,
- sales of school lands, how to be entered on, 217.
- made by appraisers of school lands to be recorded, 217, 224, 764.
- of villages, when commissioners may cause to be made, 218.
- of towns, how made and recorded, 257, 258.

PLEADINGS,
- in chancery, 415 to 417.
- name of attorney to be inserted in delaration and plea, 441.
- in justices' courts, 449.
- commencement of suits by writ or declaration, &c., 494.
- tender, 502.
- special pleas and demurrers allowed, 502.
- notice with general issue, 502.
- when plaintiff to declare, 503.
- when judgment of discontinuance may be entered, 503.
- *and proceedings on bills of exchange and promissory notes*, 503, 504.
- all or any of the parties may be jointly sued, 503.
- plaintiff may declare on the money counts alone, 503.

PLEADINGS,
- defendant entitled to set off, 503.
- separate actions may be brought against parties to bill or note, 503.
- joint drawer, indorser, &c., may plead nonjoinder, 504.
- amendment of process and pleadings, 530 to 532.
- (See *Amendments.*)
- when allegation in, that plaintiffs or defendants are partners, to be taken as true, 528.
- acts of incorporation may be pleaded by reciting title, 593.
- misnomer of corporation to be pleaded in abatement, 593.
- in actions for the collection of penalties, &c., 622.
- on informations in the nature of a quo warranto, 637, 640.
- plea of abatement to indictment, not received unless, &c., 725.
- (See *Declaration.*)

PLEDGE,
- interest of bailor in, may be sold on execution, 540.

POISON,
- killing of human being by, murder, 682.
- attempting murder by administering, 686.
- poisoning food, 687.
- administering to cattle, &c., 694.
- selling without label, punishment for, 711.

POLLS,
- of election, two or more may be held in one town, 65, 67.
- when and how may be adjourned. 65, 68.
- when to be opened and closed, 67, 68.
- proclamation to be made of opening and closing of, 68, 121.
- at town meetings, when opened and closed, 121.
- tax on, for highways, 171.
- of village elections, &c., how held, 292, 293.

POLL BOOKS,
- how to be kept and compared, 69,
- one to be delivered to town clerk and one to clerk of supervisors to be filed, 70.
- *list*, how to be kept at town meetings, 121 to 123.

POLYGAMY,
- how punished, 707.
- excepted cases, 708.

POOR,
- electors may vote to raise moneys to support, 118.
- when personal property of, may be exempt from taxation, 139.
- when towns to support, 235.
- legal settlements, how acquired, 235, 236.
- residence as a pauper not to give settlement, 236.
- town supervisors to have charge of, 236.
- what relatives to support, 236.
- proceedings to compel relatives to support, 236, 237.
- order in which relatives shall support, 237.
- when two or more shall contribute, 237.
- order for support, what to specify and how varied, 237.
- how enforced, 237.
- cost, by whom paid, 237.
- when supervisors may maintain suits against relatives, 237.
- proceedings against absconding father, mother or husband, 237, 238.
- when sales and transfers of property of such persons void, 238.

POOR,
  proceedings before county court, 238.
  duty of supervisors in making inventory, and selling and applying property, 238.
  when and how bound out, 238, 239.
  if no settlement, how relief granted, 239.
  when support of, to be a charge against the county, 239.
  penalty for removing from one town to another, 239.
  to be relieved in town where may be, 239.
  penalty for bringing into state, 240.
  when security may be required for support of, 240.
  board of supervisors may abolish distinction between town and county poor, 241.
  when made a county charge, 241.
  supervisors may levy and collect tax for support of, 241.
  when county superintendents of, to be elected, 241.
  board of supervisors may levy tax to purchase farm and dwelling for, 241.
  when powers of town supervisors relative to, to be conferred on county superintendents, 241.
  when suit may be maintained against seller of spiritous liquors for support of, 242.
POOR DEBTORS, 647 to 652, 738.
  (See *Insolvent Debtors.*)
PORTAGE COUNTY,
  boundaries of, 55.
POSSE COMITATUS,
  when and by whom may be called out, 105, 629, 704.
POSSESSION,
  estates in, definition of, 314.
  enumeration of, 314.
  right to possession of lands creates legal ownership, 318.
  tenant in, liable to rent due, 336.
  of goods, to be taken by vendee on sale, 389.
  of land, person having may institute suit in chancery against claimant, 417.
  of note, &c., to be evidence of indorsement, 528.
  in ejectment, not affected by vacation of judgment, 567.
  adverse, what deemed, &c., 642.
  right of, not impaired by descent cast, 642.
  to recover possession of lands in case of forcible entries and unlawful detainers, 605 to 610.
  (See *Forcible Entries and Unlawful Detainers.*)
POSTHUMOUS CHILDREN,
  entitled to take as heirs, 316.
  when birth of, to defeat future estate, 316.
  how to be considered in relation to inheritances, 340.
POSTING,
  another for not fighting duel, &c., how punished, 686.
POUNDS,
  towns may provide and maintain, 137.
  punishment for injury to, 137.
POWER OF THE COUNTY, 105, 629, 704.
POWERS,
  prohibited to states, 9.
  reserved to the states, 17.
  judicial construction of, 17.
  military power to be in subordination to civil, 21.
  certain devises in trust to be, 319.
  when express trusts to be, 319.
  except as provided in chap. 58, abolished, 321.
POWERS,
  definition of, 321.
  who incapable of granting, 321.
  division of, 321.
  definition of general and special, 321.
  when beneficial, 321.
  to married women, 321.
  estate of tenant for life, &c., when changed into a fee, 321.
  certain, to create a fee, 321.
  effect of, to devise the inheritance in certain cases, 321.
  what to be deemed absolute, 322.
  to revoke, effect of, 322.
  special and beneficial, who may take, 322.
  to make leases by tenant for life, 322.
  release of the same, 322.
  power to lease, &c., not suspended, &c., by execution of mortgage, 322.
  effect of mortgage on, 322.
  future, beneficial, 322.
  beneficial, liable to creditors, 322.
  general and special, when in trust, 322.
  trust powers imperative, 323.
  effect of right of selection, 323.
  construction of certain, 323.
  when chancery to execute, 323.
  application of certain provisions in chap. 57, 323.
  execution of trust power, when compelled by creditors, &c., 323.
  beneficial, how affected by certain assignments, 323.
  reservation of, in conveyances, 323.
  how to be granted, 323.
  recording, effect of, 323.
  when irrevocable, 324.
  in whom may be vested, 324.
  execution of, by married women, 324.
  ib. by survivors, 324.
  how executed, 324.
  instrument in execution of, deemed a conveyance, 324.
  execution of power to dispose by devise, 324.
  ib. by grant, 324.
  how grant of, to be acknowledged by married women, 324
  directions by grantors of, 324.
  nominal conditions annexed to, 324.
  directions of grantor of, when to be observed, 325.
  consent of third persons to execution of, 325.
  certain dispositions by virtue of, not void, 325.
  effect of omission to recite, 325.
  instruments in execution of, affected by fraud, 325.
  to devise lands embraced in, when to pass by will, 325.
  certain estates given by, to be deemed advancements, 325.
  time of suspension of alienation, how computed, 325.
  who may not take under, 325.
  married women, their authority under, 325.
  defective executions of, decreed in equity, 325, 326.
  to sell on mortgages, deemed part of security, 326.
  of attorney, to convey lands, not affected by chap. 58, 326.
  terms "grantor" and "grantee of a power," defined, 326.
  of courts of equity, to compel specific performance of agreements, 388.
  of the supreme court, 410.

POWERS,
of circuit courts and circuit judges, 412, 413.
of judge of probate, 429.
of county courts, 433, 434.
of courts of record, 438.
of courts of equity in certain cases, 639.
POWER OF ATTORNEY,
to convey lands, not affected by chapter 58, 326.
PRACTICE,
rules of, judges of supreme court may make, 409, 410, 432.
ib. judges of courts may make, 438.
ib. circuit judges may make, and how, 438.
ib. in chancery, 419.
ib. courts may make respecting depositions, 518, 519.
ib. in actions relating to real estate, 586.
(See *Rules.*)
PRAIRIE, FIRING,
punishment for, 697.
PRE-EMPTION,
to settlers on canal lands to be granted, 44, 792, 793.
on school and university lands, to whom granted, 219.
how rights to be proved and secured, 219, 220.
of lands granted for the improvement of Fox and Wisconsin rivers, 771, 772.
of the lands in same tract reserved by congress, 792, 793.
PRESENTMENT,
by grand jury, 16, 20, 681.
(See *Grand Jury, Indictment.*)
PRESIDENT AND VICE PRESIDENT,
constitutional provisions relating to, 10, 11.
powers of president, 11.
mode of electing, 17.
electors of, when and how chosen, 10, 64, 77.
state canvass of votes for electors, 75.
electors of, when and where to meet, and how to proceed, 77.
PRESIDENT OF SENATE,
lieutenant governor to be, 27.
his compensation, 27.
his duties on election of senator in congress, 78.
PRESIDENT AND TRUSTEES,
of villages, to constitute boards of health, 229.
their powers and duties as such, 229, 230.
their election and general powers and duties, 293 to 296.
PRESS,
freedom of, 16, 19.
PRESUMPTION,
of fraud in certain cases, 327.
in favor of orders and decrees of probate court, 430.
PRETENCES,
false, obtaining property by, how punished, 693.
PRINTERS,
duty in relation to transmitting notices of tax sales, 158.
penalty for neglect, 158.
fees for publishing notices of tax sales, &c., 166.
public printer, his duties, 209.
his term of service, 209.
affidavits of publication of notices by, 524.
their fees for publishing notices, &c., 676.
duty of public printer in relation to publishing certain laws, 746.
PRINTING,
for use of state and legislature, to be let to lowest bidder, 25, 208.
PRINTING,
of laws, resolutions, &c., 61.
when secretary of state to advertise for, 207.
proposals for same, 207, 208.
to be accompanied by a guarantee, 208.
legislature to appoint a committee on, 208.
their powers and duties, 208
document ordered by both houses to be paid for but once, 208.
no person to be paid for, except the one to whom it is awarded, 208, 209.
when legislature may annul contract for, 209.
when and by whom printer to be furnished with copy, 209
when printer to complete, 209.
PRISONS, 652, 735.
(See *Jails.*)
PRISONERS,
in jail, who to have charge of, 105.
names of, &c., to be presented to each circuit court, 106.
escape of, 701, 702.
when to be brought before magistrate of county where arrest made, 720.
proceedings if magistrate take bail, 720.
when taken before magistrate who issued warrant, 720.
examination may be adjourned, 721.
duty of magistrate in case of default, 721.
when party fails to recognize to be committed, 721.
examination, how conducted, 721.
testimony to be reduced to writing, 721.
when discharged, 721.
what offences bailable, 721.
when to be bailed or committed, 722.
witnesses to recognize, 722.
sureties may be required, 722.
recognizances of married women, 722.
witnesses refusing to recognize, to be committed, 722.
who to let to bail, 722.
magistrate may have associate, 722.
examinations to be returned, 722.
acknowledgment of satisfaction, effect of, 722.
order discharging recognizance to be filed, 723.
effect of order, 723.
proceedings on forfeited recognizances, 723.
how surety may be discharged, 723.
court may remit penalty, 723.
action on recognizance, not to be barred by reason of omissions or defects, 723.
to be discharged unless indicted, &c., 724, 725.
(See *Indictment.*)
male and female to be kept in separate rooms, 736.
not permitted to have spirituous liquors, &c., 736.
how treated, 736.
to have bible or new testament, 736.
when tools to be furnished to, 737.
unruly, how treated, 737.
bedding and clothing, &c., to be furnished to, 737.
penalty for escaping from prison, 738.
may be removed in case of fire, 738.
imprisoned for non-payment of fine, how liberated, 738.
PRIVATE ROADS,
persons working on, may be credited, 171.
may be annexed, 171.
how laid out, 177.

PRIVATE ROADS,
when to be for sole use of applicant, 177, 178.
their width, 178.
person applying, to make and keep in repair fences, &c , 178.
PRIVILEGES,
of members of congress from arrest, 7.
of citizens of the several states, 13.
of the debtor, to enjoy the necessary comforts of life, to be recognized, 21.
of members and officers of the legislature, 24, 179.
banking, not to be granted by legislature, except, &c., 35.
of electors on day of election, 76.
of sheriffs and other officers of court from arrest, 106, 411.
PROBATE COURT,
judicial power vested in, 28.
may order sale of lands for payment of debts, 345.
proceedings on such application, 345.
proceedings before, on granting probate of wills, 355, 356.
wills proved and allowed in other states may be filed in, 356.
proceedings thereon, 356.
may exempt specific devises, &c., from contribution towards the payment of debts, &c., 358.
when to issue letters testamentary, 360.
what court to have jurisdiction in certain cases, 363.
when may appoint special administrator, 364.
when to revoke letters of administration, 365.
to appoint appraisers of estates, 366.
to cite persons suspected of embezzlement, 367.
may commit person cited and refusing to answer, 367.
may compel account by persons having property in trust for executors, 367.
to appoint commissioners to examine claims against estates, 369.
in what cases may examine and adjust claims, 370.
to make order allowing time for paying debts, &c., 373.
may extend time, 373.
may extend time on appointment of new administrator, 374.
when to decree payment of debts and distribution of assets, 374.
may suspend decree in case of appeal undetermined, 374.
when to order disputed claim paid, 374.
when to make further decree for distribution, 374, 375.
may cause notice of time limited for payment of debts to be given, 375.
contingent claims, when may be presented to, 375.
claim accruing after the time limited for presenting, may be presented to, 376.
when may order sale of personal estate by executor, &c., 378.
to order allowance for children under seven years of age, 380.
to assign residue of estate of deceased persons to those entitled, 380.
to appoint commissioners and issue warrant for partition, 380.
when may assign whole estate to one of parties, 381.
PROBATE COURT,
to appoint guardians for minors, and agents for non-residents before partition, 381.
powers and duties of, in relation to probate bonds, and the prosecution of them, 383, 384
in relation to conveyances by executors, 385, 386.
powers of, in relation to guardians and wards, 398, 402, 403.
ib., in relation to masters and apprentices, 404 to 407.
judges may hold courts, and adjourn same, 428.
to be a court of record, and proceedings recorded, &c., 428, 429.
effect of attested copies as evidence, 429.
always open for certain purposes, 429.
powers and jurisdiction, 429.
process of court, 429.
orders, &c., how enforced, 429.
sheriffs, &c., to serve process issued by judge of probate, 429.
commissioners to take testimony, 429.
contempts, how punished by, 430.
when jurisdiction not to be contested, 430.
when court first taking cognizance, to retain jurisdiction, 430.
presumption in favor of orders, &c., after twenty years, 430.
when judge of circuit court to act as judge of probate, 430.
when judge not to be attorney, 430.
clerk, &c., in office, not to be appraiser, 430.
administering oaths in certain cases, 430, 431.
certain warrants, &c., may be revoked, 431.
bonds not deemed sufficient unless approved, &c., 431.
appeal to circuit court, 431.
bond on appeal, 431.
notice of appeal to adverse party, 431.
appellant to procure certified copy of record, 431.
trial of appeal in circuit court, 431.
when circuit court may allow appeal, 431, 432.
time for filing petition by party absent, 432.
filing petition in vacation, 432.
proceedings stayed by appeal, 432.
powers of circuit court on appeal, 432.
when circuit court to affirm decree, &c., 432.
costs in contested cases, 432.
execution for costs, 432.
books to be furnished by county, and blanks &c., by judges, 432.
when and where courts to be held, 432.
supreme court to make rules of practice, 432.
notice of proceedings, 433.
index to records of court, 433.
PROBATE, JUDGE OF,
how elected and term of office, 31.
office of, may be abolished, 31.
to take oath and give bond, 103.
to keep a record which shall be free to public inspection, 104.
may assign to widow her dower, 334.
wills may be deposited with, and how kept and disposed of, 355.
to give notice on application for appointment of executor, 365, 366.
when may examine and adjust claims against deceased persons, 370.

PROBATE, JUDGE OF,
  may appoint guardians to minors and others, 398.
  when may nominate guardians, 398.
  to hold probate court at times and places established by law, 428.
  may adjourn same, 428.
  powers and jurisdiction of, 429.
  when not to be employed as attorney, &c., 430.
  when judge of circuit court to act as, 430.
  blanks, &c., to be furnished by, 432.
  to make index to records, &c., 433.
  duties of, to be performed by county courts, 433.
  when office of to be abolished, 433, 434.
  his fees, 665.
  to act as court commissioner, 762.
  (See *County Judges.*)
PROBATE OF WILLS,
  notice of time and place to be given, 355.
  when to be granted on testimony of one subscribing witness, 356.
  when other witnesses may be admitted, 356.
  evidence as to their due execution, 356.
  proceedings on the probate of, 360 to 362.
PROCEDENDO,
  supreme court may issue writs of, 410.
PROCESS,
  of law, no person to be deprived of life, liberty or property without, 16.
  style of, and how issued, 31, 493.
  issued under authority of the territory, to remain valid, 38.
  civil, not to be served on day any election is held, 76.
  issued in different counties, to be served on certain waters, 93, 94.
  against county supervisors, on whom to be served, 94.
  who to execute, 105, 106.
  what former sheriff may execute, and what to deliver to successor, 106.
  power of supreme court to issue, 410.
  in chancery, to whom issued, and how tested and made returnable, 414, 415.
  judge of probate may issue, 429.
  from county court, to whom issued and by whom served, 434.
  not to be discontinued by vacancy, failure to hold term, &c., 438.
  to be in the English language, and how made out, 440.
  in courts of law, issuing and return of, 493. 760.
  clerks may issue blanks and seals to attorneys, 493.
  summons, how served, 495.
  capias, how served, 495.
  amendment of, 530.
  not to be served on Sunday, 710.)
  (See *Writs, Amendments.*)
PROCLAMATION,
  at elections, to be made of the opening and closing of the polls, and of each adjournment, 65, 68, 121.
PROFITS, 316 to 319.
  (See *Rents and Profits.*)
  mesne, how recovered, 567.
PROHIBITION,
  writs of mandamus and, 634, 635.
  (See *Mandamus.*)
PROMISSORY NOTES, 262.
  how party may recover on, when lost, 526.
  (See *Bills of Exchange and Promissory Notes.*)
PROOF,
  of execution of deed, 328.
PROOF,
  of will in probate court, 355, 356.
  effect of same, 356.
  of loss of instrument, how rebutted, 526,
  of the existence of domestic corporations, 593.
  (See *Evidence.*)
PROPERTY,
  private, not to be taken for public use without compensation, 16, 20.
  a reasonable amount, to be exempt from sale for debt, 21.
  not to be taken by municipal corporation without consent, or verdict of a jury, 35.
  of territory, to vest in state, 33, 38.
  liable to and exempt from taxation, 138, 139.
  ib. execution, 538, 540.
  offences against, 688 to 697.
  (See *Personal Property.*)
PROSECUTIONS,
  criminal, how carried on, 31.
  malicious, penalty for, 561.
  in criminal cases before justices, 484 to 492.
  ib., generality, 719 to 730.
PROSECUTOR,
  recompense to, in cases of burglary, robbery, &c., 691.
  when to be paid part of fine paid by convict, 709.
PROTESTS,
  of bills of exchange and promissory notes, 90, 91.
  making, or procuring false, by master, &c., of vessel, 694.
PROVISIONS,
  unwholesome, selling without notice, 711.
PUBLICATION,
  of laws and judicial decisions, 31, 60, 61, 209.
  of notice to take depositions, 521.
  proof of, of certain notices, 524.
  fees of, for notices and advertisements, 676.
  of the revised statutes, 740.
  superintendence of the same, 741.
  how conducted, 741, to 743.
  of certain acts, law in relation to, 743 to 746.
PUBLIC BUILDINGS, 94, 96, 110.
  (See *County Buildings.*)
PUBLIC HEALTH,
  who to constitute board of, 229.
  powers and duties of board, 229, 230.
  orders and regulations of board to be published, 229.
  nuisances, how to be removed, 229, 230.
  infected persons, how removed and taken care of, 230.
  provisions in relation to, not to conflict with city charters, 230.
  offences against, 711.
PUBLIC INSTRUCTION, 33, 34, 186, 188.
  (See *Superintendent of Public Instruction, University, Schools.*)
PUBLIC LANDS,
  which accrue to territory, to vest in state, 33.
  (See *School and University Lands, Improvement of Fox and Wisconsin Rivers.*)
PUBLIC OFFICERS,
  successors may prosecute bonds, &c., executed to predecessors, 494.
  (See *Officers.*)
PUBLIC POLICY,
  offences against, 705 to 707.
PUBLIC PRINTING, 207 to 209.
  (See *Printing.*)

PUBLIC PROPERTY,
of territory, to vest in state, 33.
governor to be superintendent of, 210.
what deemed to be in possession of the state, and under control of the governor, 210.
management of, 210.
office of superintendent of territorial property abolished, 210.
in care of directors of uniform companies, where and how kept, 228.
PUBLIC SHOWS AND EXHIBITIONS,
town board may license and regulate, 247.
penalty for exhibiting without or contrary to license, 247.
the authorities of cities and villages may grant licenses for, 247.
PUBLIC WORSHIP,
punishment for disturbing meetings for, 709.
(See *Worship.*)
PUNISHMENT,
cruel and unusual, not to be inflicted, 17, 19.
no person for same offence to be twice put in jeopardy, 16, 20.
for contempts, by courts of record, 439.
for violation of order to restrain waste, 582.
not to be inflicted until party duly convicted, 682.
general provisions concerning, 711 to 713.
sentence when no punishment provided by statute, 729.
sentence of, in the state prison, 730.
when capital, how inflicted, 730, 731.
may be commuted by the governor, 731.
PURCHASER,
who to be deemed, at tax sales, 158.
when entitled to tax certificate, 159.
of school lands, when to pay for improvements thereon and when not, 215.
to make application for same in writing, 215
when to make first payment for same, 212.
penalty for neglect, 212.
when not to cut wood or timber, &c., 213.
how retain purchase money as a loan, 214.
when may pay money before due, 214.
when liable for waste, 213.
rights and powers of, on purchase of franchise of corporation, 309.
implied trust, not to prejudice bona fide purchaser, 318.
claiming under defective execution of power, relieved in equity, 326.
when conveyance void as against subsequent, 329.
definition of term, 330.
in what cases executors, &c., not to become, 347.
conveyance to, for valuable consideration, when valid, 387.
conveyances to defraud, void, 387.
without notice, when protected, 390.
in good faith, on sale under execution, not affected by want of notice, 544.
officer making sale not to be, 544.
of lands, during pendency of suit, liability of, 586.
QUAKERS,
how marriages may be solemnized among, 393.
QUALIFICATIONS,
for president, 10.
of voters at elections, 22, 63, 119.
of members of the legislature, 24.
for governor, 26.
of voters at school district meetings, 189.
ib., at elections by religious societies, 267.
QUIT CLAIM,
deed of, and release, sufficient to convey interest of grantor, 326.
QUORUM,
what shall constitute in each house, 24, 33.
ib., in supreme court, 29.
in county board of supervisors, 95.
in town board of supervisors, 126.
QUO WARRANTO,
circuit courts to have original jurisdiction in, 413.
proceedings on information in *the nature* of, 636 to 640.
writ of, abolished, 639.
(See *Informations.*)
RACINE COUNTY,
boundaries of, 55.
RAILROADS,
punishment for injuries to, 695.
RAPE,
punishment for, 687.
and abuse of child, 687.
assault with intent to commit, 687.
RATES OF TOLL,
for grinding, 262.
penalty for exacting illegal toll, 262.
to be charged by plank and turnpike road companies, 280.
who exempt from, 280.
list of rates of, to be posted at gates by road companies, 285.
REAL ACTIONS,
not enumerated and retained, abolished, 586.
REAL PROPERTY,
definition of, 59.
what to include for purposes of taxation, 138.
what exempt from taxes, 138, 139.
where to be assessed, 139.
title to, may be passed by decree, 418.
what not subject to sale on execution, 540.
sale of, under execution, and redemption of same, 541 to 551.
(See *Executions.*)
of suits relating to, 562 to 586.
provisions concerning actions relating to, 584 to 586.
of improvements on, 569, 570.
when writ of possession shall issue where jury find against person claiming lands, &c., 569.
if defendant claim that he has made valuable improvements, issue to be made and tried, 569.
if plaintiff pay value, &c., to have writ of possession, 570.
when deemed to have abandoned claim, 507.
(See *Land.*)
RECEIPTS,
not to be evidence of moneys paid into state treasury, unless countersigned, 84, 86, 216.
when duplicates to be given by district attorney, 103.
for moneys paid on account of school lands to be countersigned by secretary of state, 216.
of treasurer, when to be filed with commissioners, 222.
officers receiving fees, to give, 678.
making fraudulent, by warehousemen, how punished, 693.
punishment for forging, 697.
RECEIVERS,
when to be appointed for corporations and their powers, 308, 595, 596, 639.
when not to be appointed until notice given, &c., 418.
receipt, of purchase of public lands, to be evidence, 528.
of stolen goods, how punished, 690.
not necessary to aver or prove that the person who stole has been convicted, 691.

RECEIVING PROPERTY,
stolen knowingly, 690.
receivers of, may be tried before thief, 691.
officer arresting to secure goods, 691.
prosecutor and officer securing, when and how paid, 691.
RECOGNIZANCES,
executed under territorial government, to remain valid, 38.
of alleged father of bastard child, 245.
to stay execution in justices' courts, 471.
on appeal from justices' courts, 476, 486.
bail bond to be considered recognizance, 499.
not to bind lands, 536.
to keep the peace, 717 to 719.
when may be required of fugitives from other states, 716.
given on arrest or examination, 720 to 723.
discharge of, on acknowledgment of satisfaction in certain cases, 722.
actions upon, not barred by certain omissions and defects, 723.
of accused, in certain cases, 729.
party refusing to give, to be committed, 729.
to keep peace, forfeiture of, 730.
(See *Crimes*, *Prisoner*.)
RECORDING,
of conveyances of real estate, 329.
of deeds of pews and slips, 329.
of assignment of mortgage, 329.
of certificate and acknowledgment of satisfaction of same, 331.
of bonds and contracts relative to lands, 331.
of depositions, 519, 521.
RECORDS,
of other states, faith and credit to be given to, 12, 13.
of deeds, &c., may be transcribed into books of new county, 330.
of probate court, judge to keep and make index to, 433.
to be in the English language, and how made out, 440.
of courts of other states, &c., when evidence, 522.
certified copies of, when evidence, 524.
judgment, to be made out, &c., 534 to 537.
copy of record of judgment against corporation, to be filed with secretary of state, 639.
of judgment, costs to be taxed before entered in, 660.
making, altering or forging, punishment for, 697.
public, how authenticated, 800, 801.
REDEMPTION,
of lands sold for taxes, 160, 161.
clerk of supervisors to execute certificate of, 161.
of lands sold for village taxes, 301, 302.
of franchises of corporation, 309.
of lands sold on execution, 544, 545.
REFEREES,
referring and consolidating causes, 507, 508.
when and how referees appointed; to report, &c., 507.
entry to be made on record, 508.
judgment on report of, 508.
report not to be accepted until proved by affidavit, 508.
commissioner may be appointed to examine and report, 508.
REFERENCE,
orders of, in cases in chancery, may be made by circuit judge, 419.
REFERENCE,
in proceedings to foreclose mortgage, 424.
of causes in courts of record, 507, 508.
REGENTS OF UNIVERSITY,
government of university vested in, 186.
how elected and classified, 186,
their term of office, 187.
vacancies, how filled, 186.
to be a body corporate, 186.
their general powers and duties, 187, 188.
quorum, 188.
REGISTER OF DEEDS,
when and how chosen, and term of office, 28, 110.
to furnish secretary of state with names of persons entitled to copy of laws, 62.
to distribute laws, 62.
to take oath and execute bond, 110, 111, 114.
to appoint a deputy, and when he shall act as register, 111.
his general duties, 111.
what to indorse on writings received for record, 111.
to keep a general index, and what entries to be made therein, 111.
to keep index to each volume of records, 112.
copies of papers, &c., certified by him to be evidence, 112.
where to keep his office, 113.
when to keep same open, 113.
filing copy of deed with, 328, 329.
to record bonds and contracts relative to lands, 331.
his fees therefor, 332.
to receive and file certain papers, 525.
his fees, 673.
REGISTER,
of land office, his certificate of purchase of lands, to be evidence, 528, 529.
of the state land office, when and how appointed, 770, 773.
his powers and duties, 771.
his salary, 769, 770.
RELATIVES,
when and how may be compelled to support poor persons, 236, 237.
order in which they shall support same, 237.
when two or more shall contribute, 237.
when town supervisors may maintain action against, 237.
liable for costs of proceedings, 237.
RELIEF,
of persons confined in jail, 652, 738.
(See *Jails*.)
RELIGION,
constitutional provisions relative to, 16, 21.
RELIGIOUS,
test, not to be required as a qualification to office, 14, 21.
belief of witness, not to render him incompetent, 21.
tenets, not to be required of any professor, teacher or student in the university, 188.
RELIGIOUS MEETINGS,
punishment for disturbing, 709.
RELIGIOUS SOCIETIES,
no money to be drawn from treasury for support of, 21.
how organized, 265, 266.
who may vote, 265.
certificate to be recorded, 266.
trustees of, to be a body corporate, 266.
powers of trustees, 266, 267.
classification of same, 267.
two may call meeting, 267.

RELIGIOUS SOCIETIES,
notice of expiration of term of trustee and of elections, 267.
elections, how conducted, 266, 267.
qualifications of voters, 267.
clerk to keep register of stated hearers, 267.
majority of society to fix compensation of minister, 267.
when circuit court may order sale of property, 268.
notice of application for order, 268.
heretofore incorporated, to be confirmed, 268.
if dissolved, may be re-incorporated, 268.
lands, &c., conveyed to trustees, how held, 268.
appointment of trustees in certain cases, 268.
when minister, deacons, &c., to be trustees, &c., 268, 269.
what property of, exempt from taxation, 269.
REMAINDERS,
when future estates to be, 314.
contingent, in fee, how may be created, 315
provisions relative to, upon certain estates for life, 315.
when remainder to take effect in certain cases, 315.
contingent, on a term for years, 315.
remainder of estates for life, 315.
meaning of "heirs" and "issue" in certain, 315.
in future estates, how created, 315.
upon a contingency, 316.
construction of certain, 316.
not to be defeated in certain cases, 316.
REMAINDERMAN AND REVERSIONER,
may sue for injuries to inheritance, 337.
when to be admitted to defend, 584.
when to sue after default of tenant, 584.
certain recoveries void as to, 584.
REMISSION,
of damages in justices' courts, 467.
of penalties, on prosecution of recognizances, 723.
REMOVAL,
from office in case of impeachment, 28.
of what officers, may be made by governor, 28, 115, 116.
of clerk, judge of circuit court may make, 115.
of clerk of supervisors, board may make, 115, 116.
of what officers, legislature may make, 116.
same by regents of university, 187.
of paupers, 239, 240.
without legal authority, penalty for, 239.
of trustees of trusts, 320.
of executors, 361.
of administrators, 365.
of guardians, 402.
of causes from county courts to supreme court, 436.
of judges of county courts, how made, 437.
what to constitute removal of justice, 481.
of prisoners, in case of fire, 738.
of board of public works and their treasurer, may be made by governor, 773.
RENTS,
of real estate of persons absconding, when may be taken, and how applied, 238.
persons in possession of land, liable to pay, 336.
how recovered, 336.
RENTS,
proceedings against tenant holding over after rents become due, 607.
limitation of actions for, 643.
RENTS AND PROFITS,
of lands, disposition of, how governed, 316.
accumulation of, how may be directed by will or deed, 316, 317.
when directions void, 317.
application of, to support of children, 317.
who entitled to in certain cases, 317.
liable to creditors in certain cases, 319.
recovery of in action of ejectment, 567.
REPEAL,
of acts of incorporation, 35.
of repealing act, effect of, 60.
of certain acts, 744 to 746.
general, of acts and parts of acts, 747 to 758.
of acts, not to affect acts done or rights accrued, 757.
offences committed, and forfeitures incurred, not affected by, 757.
ib. as to prosecutions pending, 757.
of repealed statutes, not to imply that they were in force, 757.
construction of, as to certain offices and appointments, 757.
REPLEVIN,
in county courts, 436.
in justices' courts, 462 to 466.
execution in, 465.
action of, in general, 611 to 616.
when may be brought, 611.
who may maintain, 611.
how to be laid and tried, 611.
not to lie for property taken for tax, 611.
when not, for goods taken in execution or on attachment, 611.
writ not to issue till affidavit made, 611.
contents of affidavit, 611.
to be commenced by writ, 611.
form of same, 611.
plaintiff to execute bond, and condition of same, 612.
upon receipt of bond, sheriff to deliver property and summon defendant, 612.
summons, how served, 612.
officer may break open building, 612.
when plaintiff may recover value of property, 612.
sheriff to return writ and bond, 612.
what to state in his return, 612.
when defendant's appearance to be entered, 612.
when plaintiff to declare, &c., 613.
when defendant to plead, 613.
ib. if not served with copy declaration, 613.
when action to be tried, and how continued, 613.
what declaration to allege, &c., 613.
particular place of taking need not be specified, 613.
plea of general issue, &c., 613.
effect of same, 613.
notice may be given of matters that may be pleaded, 613
plaintiff may reply several matters, 614.
jury to assess damages, 614.
writ of inquiry to issue, 614.
jury to assess value of property, 614.
judgment that goods be replevied, or for value thereof, 614.
execution, what to command, 614.
how to be executed, 614.

REPLEVIN,
judgment for defendant, where property has been delivered to plaintiff and he discontinues, 614.
ib. in other cases, 615.
verdict and judgment, when jury find part for plaintiff and part for defendant, 615.
ib. where one has right of property, and the other a lien thereon, 615.
when there is no trial upon the issue, and one party has a lien, court may impanel jury, 615.
when judgment, &c., to be against plaintiff and his sureties, 615.
notice of execution of writ of inquiry to be given, 615.
judgment, where property is not replevied and defendant recovers, 615.
how judgments docketed, and effect of same, 616.
second writ not to issue when judgment against plaintiff, 616.
writ of withernam abolished, 616.
against sheriff, process to be executed by coroner, 616
limitation of action, 643.
REPORTER,
entitled to copyright of reports, 209.
may cause same to be published annually, 209.
state to purchase of, one hundred copies, 209.
to execute bond, 209.
supreme court to appoint, 410.
REPORTS,
of attorney general, 87.
of cases decided in the supreme court, when and how published, 209.
state to purchase one hundred copies of, 209.
how same to be distributed, 209.
of commissioners to examine claims of deceased persons, 370.
ib. to make partition, 382.
books of, of adjudged cases in other states, evidence, 523.
of questions of law in criminal cases to the supreme court, 729.
of appraisers of school and university lands, 764.
of secretary of state, in relation thereto, 765.
of board of public works, 769.
(See *Annual Reports.*)
REPRESENTATIVES,
in congress, 5.
compensation, privileges and disabilities of, 724.
when and how chosen, 68, 77.
state entitled to three, 794.
(See *Members of Congress.*)
REPRIEVES,
governor may grant, 26, 731.
RESCUE,
of prisoner, from custody, 701, 702.
RESIDENCE,
when not lost, if absent from U. S., 23.
what, to give legal settlement, 236.
as a pauper, not to give, 236.
RESIGNATION,
of representative in congress, notice to be given of, 77.
to whom to be made, 114, 115, 124.
of justice, notice to be given to clerk of circuit court, 124.
of trustees of trusts, 320.
of guardians, 402.
RESOLUTIONS,
in *congress*, proceedings on, 8.
RESOLUTIONS,
appended to constitution of Wisconsin, 44, 45.
joint, passed at each session, to be printed with laws, 61.
ib., when secretary to copy and furnish, and when to be printed, 61, 209.
RESPONDENTIA,
contracts of, excepted from certain provisions relative to fraudulent conveyances, 389.
RESTITUTION,
of amount collected on reversal of judgment, 475.
of possession of lands unlawfully withheld, 605, 608.
writ of, 609.
RETURN,
of taxes, by town collectors, 152, 153, 154.
of process in chancery, 414, 415,
of writs of injunction, 425.
of sheriff, 496.
to wrong officer, not to excuse neglect, 496,
of officers may be amended, 530.
on writ, by sheriff or constable to be evidence, 672, 673.
REVENUE,
bills, in congress, to originate in house of representatives, 7.
constitutional provisions concerning, 32.
(See *Taxes.*)
REVERSAL,
of decrees, on appeal from chancery, 428.
of judgments, on certiorari from justices' courts, 475.
ib., how to affect limitation of actions, 645.
of judgment, costs on, 657.
REVERSION,
definition of, 314,
of dower, license to sell real estate may extend to, 346.
REVERSIONER, 337, 584.
(See *Remainderman and Reversioner.*)
REVISED STATUTES, 49.
how published and what to contain, 740.
copy right, to whom granted and how long, 740.
governor to subscribe for 4000 copies, 740.
contractor to publish 2000 copies additional, 741.
when to be completed and delivered, 741.
governor authorised to accept of same, 741.
what laws, &c., to be published in, 741, 742.
how arranged and published, 742.
duties of commissioner in relation to, 742, 743.
how delivered and disposed of, 743.
when to take effect, 747.
when provisions in, conflict, which to prevail, 758.
REVOCATION,
effect of reservation of power of, 322.
of wills, 354.
when conveyance containing power of, void, 387.
ib., executed by person to whom given, valid, 387.
of warrants and commissions issued by judges of probate, 431.
REWARDS,
governor may offer when criminal escapes, 80.
RICHLAND COUNTY,
boundaries of, 56.
RIGHTS,
of the people to bear arms, and to be secure in their persons, houses, &c., 16, 20.

RIGHTS,
  enumeration of certain, not to deny those retained, 17.
  of the accused, 17, 20, 681, 682, 718, 724.
  equality of, and how secured, 19.
  of the people to assemble and consult, and petition, 19.
  of worship, not to be infringed, 21.
  rights to continue as if no change in government, 37, 38.
  of parties recovering in certain cases, 585.
  of persons accused of crimes & offences, 681, 682.
  when person not to answer for criminal offence except on indictment, 681.
  what necessary to conviction, 682.
  when not held to answer second indictment, 682.
  when shall be so held, 682.
  not to be punished unless legally convicted, 682.
RIOT, 703 to 705.
  what officers to suppress, 105.
  (See *Unlawful Assemblies.*)
RIVERS,
  navigable, to be common highways, 33.
  concurrent jurisdiction over, with other states, 50.
  navigable, penalty for obstructing, 182.
  ib., what to be deemed, and to what extent, 248.
  meandered, proceedings by person owning land on, 417.
ROADS,
  county supervisors may appoint commissioners to lay out, &c, in certain cases, 96.
  may alter or discontinue territorial or state roads, 96.
  law of the, &c. ,247, 248.
  not to be laid through cemeteries, 271.
  punishment for maliciously injuring, 695.
ROBBERY,
  by person armed with dangerous weapon, 686.
  ib., not being armed, 686.
  assault, with intent to rob, 686.
ROCK COUNTY,
  boundaries of, 56.
RULES,
  of practice, judges of supreme court may make, 409, 410.
  in chancery, may be entered by consent of parties, 416.
  in probate court, supreme court to make, 432
  judges of courts may make, 438.
  proceedings to procure uniformity of, in circuit courts, 438.
  circuit judges to make agreeably to rules of supreme court, 438.
  courts may make respecting depositions, 518, 519.
  to show cause, by whom granted in certain cases, 639.
SALARIES,
  of president, 10.
  of governor, 26.
  of judges, 30, 762.
  of secretary of state, 85.
  of treasurer, 87.
  of attorney general, 88.
  of state superintendent, 88.
  of district attorney, 102.
  of the chancellor, professors, &c., in the university, 187.
  of register and treasurer of public works, 769, 770.
  (See *Compensation.*)
SALES,
  of lands for unpaid taxes, 157 to 163.
SALES,
  of school and university lands, 210 to 220.
  how to be entered on plats, 217.
  of lands mortgaged for school moneys, 222, 223.
  of school lands, when to be void, 224.
  when may be suspended by governor, 224.
  of personal property, by persons absconding when void, 238.
  of property of persons absconding, when and how sold, 238.
  of lands, for unpaid village taxes, 301.
  certain, made by trustees, void, 320.
  certain, not avoided on account of irregularity in the proceedings, 352.
  of goods, &c., when deemed fraudulent, 389.
  effect of, when made by guardians for infants, 420, 421.
  of estates of insane persons and habitual drunkards, 421, 422.
  disposition of proceeds of same, 422.
  of mortgaged premises, by whom made, 424.
  on executions from justices' courts, 472, 473.
  of personal property on executions from courts of record, 540, 541.
  of real estate on execution, 543, 544.
  (See *Executions.*)
  of real property, proof of publication of notice, 524.
  by masters in chancery, confirmed, 761, 762.
  when to be made by sheriffs, 762.
  of lands, for the inprovement of Fox and Wisconsin rivers, 771, 772.
SALE OF LANDS OF MINORS, &c.,
  sale of lands of persons under guardianship, and securing the proceeds for their use, 341 to 344.
  when guardian may sell real estate of ward for support, &c., 341.
  when may sell and invest proceeds at interest, 341.
  application of proceeds for support, &c., 341.
  investment of proceeds for benefit of ward, 341.
  residue on final settlement, considered real estate, 342.
  petition by guardian for license, 342.
  order to show cause, 342.
  service, &c., of order, 342.
  when certificate of supervisors of town necessary, 342.
  hearing on petition, 342.
  examination of guardian, &c., 342.
  when license to be granted, &c., 342.
  bond to be given by guardian, 342, 343.
  guardian to take oath before fixing time and place of sale, 343.
  notice of sale, &c., 343.
  license, how long in force, 343.
  when foreign guardian may file copy of his appointment, 343.
  when may be licensed to sell, 343.
  manner of conducting such sale, 343.
  disposition of residue on final settlement, 343.
  foreign guardian to give bond before sale, 343.
  when costs may be awarded to prevailing party, 343.
  limitation of suits by ward, &c., to recover lands sold, 344.
  for what causes sales not to be avoided,344.
  liability of guardian for misconduct, 344.

SALE OF LANDS OF MINORS, &c.
when sale not held void in case of adverse claimant, 344.
SALE OF LANDS BY EXECUTORS, ADMINISTRATORS AND GUARDIANS.
for payment of debts and legacies, by executors, &c., 344 to 352.
when executor, &c., may sell on obtaining license, 344.
petition for license, 345.
order to show cause, 345.
copy to be served or published, 345.
when notice not necessary, 345.
hearing on petition, 345.
examination of petitioner and witnesses, 345.
court may license sale of whole or part, 345.
when executor, &c., to give bond before sale, 345.
proceeds of sale deemed assets, 346.
license may be prevented by giving bond, 346
for whose benefit bond may be prosecuted, 346.
when court may order sale, 346.
order of sale what to specify, 346.
certified copy to be delivered to executor, 346.
sale of reversion of dower, 346.
notice of sale, 346, 347.
where, when and how, sale to be made, 347.
executor, &c., forbidden to purchase, 347.
credit on sale, 347.
return of sale and proceedings thereon, 347.
when sale to be vacated, and new sale ordered, 347.
when to be confirmed, 347.
executor, &c., to take oath before sale, 347.
affidavit of notice of sale, 347.
adjournment and notice of, 348.
when sale may be authorised for payment of legacies, 348.
interest in land held under contract may be sold, 348.
sale to be made subject to payments to become due, and indemnity to be given, 348.
condition of bond of indemnity, 348.
assignment of contract, and rights of purchasers, 348.
how proceeds of sale disposed of, 349.
sales to be made subject to incumbrances, 349.
foreign executor, &c., may file copy of his appointment, 349.
may be licensed to sell lands, 349.
when no further bond to be required from foreign executor, &c., 349.
when bond required and what to contain, 349.
when licensed to sell more than is necessary to pay debts, &c., bond to be given, 349.
when guardian may be licensed to sell lands of ward, 350.
court may license sale of whole or part of ward's estate, 350.
guardian to give bond, 350.
when license not to be granted without approbation of supervisors of town, 350.
who entitled to notice of hearing, 350.
foreign guardian may file copy of his appointment, 350.
may be licensed to sell real estate of ward, 350.
when foreign guardian to give bond, and when not, 350, 351.
surplus to be considered real estate, 351.
SALE OF LANDS BY EXECUTORS, ADMINISTRATORS AND GUARDIANS.
guardian to take oath before sale, 351.
when court may award costs, 351.
limitations of actions to recover lands sold by executors and administrators, 351.
effect of disability to sue, 351.
for what causes sales not to be avoided, 352.
recovery of damages for misconduct in relation to sale, 352.
when sale not avoided for certain irregularities, 352.
liability of executor, &c., for fraud, 352.
when probate court may order sale of personal estate of deceased, 378.
SAUK COUNTY,
boundaries of, 56.
SCHEDULE,
to constitution, 37.
to be annexed to insolvent's petition, 647.
SCHOOLS,
district, legislature to establish, 34.
to be uniform, and to be free, 34.
no sectarian instruction allowed therein, 34.
annual tax to be raised for support of, 34, 147.
how districts formed, 188, 189.
who entitled to vote at meetings, 189.
challenges and proceedings thereon, 189.
annual and special meetings, 190.
powers of electors when assembled, 190.
when notice of special meetings to be served, 190.
if election not held at annual meeting, how special meeting may be called, 190, 191.
amount that may be raised to build school house, 191.
length of time schools to be taught, and application of school moneys, how determined, 191.
district officers and their duties, and term of office, 191.
duty of director, 191.
powers and duties of treasurer, 191, 192.
to be district collector, 191, 192.
to make annual report, 192.
to give bond, 192.
when board may appoint treasurer, 192.
when treasurer to prosecute bond of his predecessor, 192.
liable for moneys lost by his neglect, 192.
duties of clerk, 192, 193.
to hire teachers, and contract to be in writing, 193.
to make annual report to superintendent, 193.
to draw orders on treasurer, and make out tax lists and warrants, 194.
to furnish teacher with register, 194.
district board, of whom to consist, 194.
to furnish appendages, &c., for school house, 193.
their general powers and duties, 194, 195.
when to fill vacancy in their own number, 194, 195.
how may determine what books shall be used in school, 195.
what branches of education to be taught in, 195.
who to determine what books to be used, 195.
powers and duties of town superintendent, 195 to 199.
when moneys not to be apportioned, 196, 197.
how, in certain cases, 197.
when to be re-apportioned, 197.

SCHOOLS,
superintendent to examine teachers and visit schools, 198.
how districts formed, 198.
how property of divided, 198, 199.
appeals may be made to state superintendent, 199.
assessment and collection of taxes, 199.
tax list, how made out, 199, 200.
equalization of valuations, 200
tax warrant, how issued, 200.
delinquent lands, how returned, and taxes thereon collected, 200, 201.
how and where tax warrant may be executed, 201.
how renewed, 201.
errors in tax list may be corrected, 201.
when tenant paying tax may recover same, 201.
town clerk to deliver to district description, &c., of taxable property therein, 202.
other duties of town clerk, 202.
certain duties of clerk of supervisors, 202.
when appropriation to be made for district libraries, 202.
how tax may be raised for same, 203.
regulations concerning libraries, 202, 203.
when justices to have jurisdiction where school district interested, 203.
judgments against districts, how collected, 203, 204.
penalties imposed on officers and inhabitants of district for neglect of certain duties, 204.
how certain penalties applied, 205.
penalty on clerk for making false report and not delivering books, &c., 205.
SCHOOL DISTRICTS,
how formed, 188, 189.
when deemed organized, 189.
to be bodies corporate, 189.
who entitled to vote in, 189.
by whom formed, 198.
when alteration in, to take effect, 198.
when new one formed, how property divided, 198, 199.
formation of, from two or more towns, 199.
how taxes in, assessed and collected, 199 to 201.
SCHOOL FUNDS,
of what to consist, 34.
to remain separate and perpetual, 34, 220.
how interest of, to be applied, 34, 220.
how distributed, 34.
when and how apportioned, 89.
distribution of income of, when and how made, 205.
county treasurers to apply for, and receive same of state treasurer, 205.
to give notice of same to town superintendents, 205.
if not applied for, to be added to moneys next apportioned, 205.
when not to be apportioned to a county, 206.
investment of, 220.
how to be loaned, 220, 221.
amount to be loaned to one person, 221.
when to be loaned, 221.
interest to be at seven per cent, 221.
loans not to be for more than five years, 221.
principal may be paid at any time when interest due, 221
amount loaned not to exceed half the appraised value of the lands, 221.
SCHOOL FUNDS,
loans and interest to be paid into state treasury, 222.
how loans collected on note and mortgage, 222.
overplus collected, to whom paid, 223.
account of, to be kept by commissioners, 223.
fines for trespasses on school lands, to belong to, 225.
same of escheated estates of intestates, 339.
SCHOOL HOUSES,
electors may vote a tax to build, 190.
limitation of, 191.
may designate site for, 190.
when not to be sold, or site changed by vote at special meeting, 190.
to be furnished by district board, 193.
district board may purchase, lease or sell site for, 194.
same may build, hire or sell, 194.
who to have care of, 194.
SCHOOL AND UNIVERSITY LANDS,
of what to consist, 34, 35.
who to sell, 35, 210, 211.
purchase money of, how to be secured, 35.
when and how to be sold, 211
when may be withheld from sale, 211, 218.
minimum price of, 211.
how long sale at auction to continue, 211.
each lot to be offered separately, 212.
when two or more lots may be sold together, 212.
order of sale, 212.
one person not to purchase over 160 acres, 212.
terms of payment, 212.
considerations in fixing amount of purchase money paid on sale, 212.
when first payment to be made, 212.
penalty for neglect, 212.
additional security may be required, and how given, 213.
certificate of sale, when forfeited, 213.
how revived before re-sale, 213.
surplus on re-sale, how disposed of, 213.
when purchaser liable for waste, 213.
title of, to remain in state, 213.
when patent to issue, 213.
force and effect of certificate of sale, 213.
same not to authorize cutting of timber, &c., 213.
purchaser may take firewood, also timber, &c., to improve land, 213.
when may retain purchase money as a loan, 214.
may pay same before due, 214.
forfeited lands to be re-offered at auction, 214.
when subject to private entry, 214, 215.
who entitled to preference if two or more apply, 215.
improvements on, when to be paid for by purchaser, 215.
application for purchase, to be in writing, 215.
when certificates of purchase to be issued, 215.
conditions to be inserted in certificate, 216.
to be paid for in specie, 216.
sales of, how noted on plats, 217.
when to be re-appraised and the improvements thereon, 217.
value of improvements to be added to value of land, 218.

SCHOOL AND UNIVERSITY LANDS,
when may be laid off into village lots and how sold, 218.
when may be leased, 218.
supervision of, vested in commissioners, 218.
when surveys of, may be made by commissioners, 218.
commissioners not to purchase, 219.
pre-emption of, who entitled to, 219.
when and how to be proved, 219.
pre-emptors may purchase at appraised value, 220.
not to be sold for less than $1.25 per acre, 220.
proceeds of, to be a perpetual fund,and how interest applied, 220.
how principal arising from, to be loaned, 220, 221.
when sale of, to be void, 224.
fallen timber and grass on may be sold, 224.
when sales of may be suspended, 224.
when sold, may be taxed, and interest of purchaser disposed of, 224, 225.
when occupant of, liable to action for forcible entry and detainer, 225.
damages and fines for trespasses on, to belong to school fund, 225.
when former appraisers of, to be continued in office, 225.
provision in relation to appraisal in certain counties, 225.
expenses of appraisers and surveyors, &c., how paid, 225.
circuit judges to charge grand jury respecting trespasses on, 226.
punishment for wilful injury to, 696.
act providing for the appraisal and sub-division of, 762.
legislature to appoint appraisers, 762, 763.
oath of appraisers, 763.
their duties, 763.
duty of secretary of state in relation thereto, 764.
appraisers to make report and plats, &c., 764.
their compensation, 764.
secretary to report to legislature, 765.
repeal of law for appraisal of school lands north of Wisconsin and Fox rivers, 765.
SCHOOL MONEYS, 34, 89.
duties of clerk of supervisors in relation to, 100.
electors may vote to raise, 118.
apportionment of, when not to be made, 196, 197.
how made, when district altered, &c., 197.
if not drawn, to be re-apportioned, 197.
(See *School Funds.*)
SCHOOL TAX,
how and for what purposes may be raised, 190.
how assessed and collected, 199 to 201.
on lands, when returned, to be entered on town assessment roll, 201.
SCHOOL TEACHERS,
to be examined annually, 198.
how their certificates may be annulled, 198.
when may be re-examined, 198.
SCIRE FACIAS,
on judgments rendered on bond of executor, &c., 384.
on bail bond, 499, 500.
from what court and when may issue, 499.
time allowed to serve, 499.
SCRIP,
state, not to be issued except in certain cases, 33.
SEAL OF STATE,
who to keep, 37, 81, 311.
what acts of governor to be authenticated thereby, 37.
description of, to be deposited and recorded in office of secretary of state, 311.
great seal of the territory adopted as the seal of the state until another is prepared, 311.
(See *Great Seal.*)
SEALS,
for circuit and county courts to be provided by supervisors, 311.
when judges may authorize the use of any temporary seal, 311,
any device by way of seal affixed to instrument to be valid as a seal, 311.
scroll or device upon a deed, &c., to be., 330.
probate courts to have, 428, 433.
of county courts, county judges to procure, 436.
when may be destroyed and new one made, 438, 439.
of court, when not required, 524.
SEALERS,
in towns, when elected, 119.
to take oath, 123.
county treasurers to be, 260.
SEAMEN,
not to be deemed residents, 23.
SEARCHES AND SEIZURES,
constitutional provisions relating to, 16, 20.
certain searches to be gratuitous, 677.
SEARCH WARRANTS,
when and how issued, 16, 20.
for books and papers, 624, 625.
proceedings thereon, 714, 715.
when and by whom issued, 714.
to whom issued, and what to contain, 715.
property seized, how kept and disposed of, 715.
SEAT OF GOVERNMENT,
where to be, 38
SECRETARY,
of board of regents, appointment and duties of, 187.
of board of public works, register to be, 766.
his duties, 766, 769.
SECRETARY OF STATE,
when to act as governor, 27.
when and how chosen, and his term of office, 27, 76.
his duties, and to be *ex officio* auditor, 27.
to be keeper of great seal, 37.
when to furnish copy of laws and resolutions to printer, 61, 209.
to make index and marginal notes to laws, 61.
to superintend printing of, and certify same, 61.
to distribute laws, 61.
when and how to notify elections, 65, 66.
his duties as one of board of state canvassers, 73, 74, 75.
when may send special messenger for statement of votes, 73.
when for purpose of notifying electors, 75.
to transmit certificate of election of representatives in congress, 74.
his duties in relation to electors of president and vice president, 77.
same on election of senator in congress, 78.

SECRETARY OF STATE,
to take oath and give bond, 81.
his general duties, 81, 82.
where to keep his office, and when to keep same open, 82.
may appoint deputy, and his duties, 82.
to cause enrolled laws to be bound, &c., 83.
to deposit in his office printed copy of laws, and to note errors therein, 83.
to deposit acts of congress received by him in state library, 83.
his powers and duties as auditor, 83, 84.
may require persons presenting accounts to be sworn, 84.
may require persons receiving moneys, &c., to render account, 84.
to countersign receipts for moneys paid into treasury, 84, 216.
to keep account between state and treasurer, 84, 216.
to publish laws relating to collection of moneys, &c., 84, 85.
his salary, 85.
his books and accounts, how to be kept, 87.
one recovery not to cancel his bond, 87.
when to apportion state taxes among counties, 146.
to charge same to counties, 147.
to print and distribute blank assessment rolls and forms, 165.
his powers and duties in relation to public printing, 207 to 209.
to be one of commissioners for sale of school lands, &c., 35, 210.
to countersign patents for same, 214.
his duties on applications to purchase same, 215, 216.
to transmit to governor monthly statements of sales of school lands, 216.
to record reports of appraisers of school lands, 217.
how to note on plats sales of school lands, 217.
fees on sale of school lands, 219.
his duties when copy of record of judgment against corporation is filed in his office, 639.
fees in office of, 674.
his duties in relation to publication of revised statutes, 741 to 743.
ib. in relation to appraisal of school and university lands, 764, 765.
SECURITY,
for costs in county court, 434.
for costs in general, 501, 502, 658, 659.
court may require, 501.
when defendant may require, 501, 658.
order to file, 501, 658, 659.
form of, 501, 659.
when filed and notice given, 501, 659.
when new may be required, 501.
exception to sureties, 659.
justifying by, 659.
to keep the peace, 717 to 719.
SEDUCTION,
punishment for, 708.
SELLING,
spirituous liquors without giving bond, 242, 243.
ib. to Indians, 243, 244.
lands without title. 694.
obscene books, punishment for, 709.
lottery tickets, 705, 706.
unwholesome provisions, 711,
poison, &c., without label, 711.
SENATE,
of *United States*, 6.
of *this state*, 23, 24.
SENATORS,
in congress, election of, 6, 78.
compensation, privileges and disabilities of, 7.
if vacancy in office, when to be supplied, 78.
election of, how made, 78.
certificate of election to be made and delivered to, 78.
majority of all votes given, necessary to a choice of, 78.
not subject to removal by legislature, 116.
state, how to be chosen, 23.
how classified, and their term of office, 23.
apportionment of, 40.
first elected, how long to hold office, 44.
when may administer oaths, 80.
SENATE DISTRICTS,
how formed and numbered, 23.
state divided into, 40.
SENTENCE,
governor may suspend execution of, in case of treason, 26.
of imprisonment, when to dissolve marriage, 394.
where no punishment provided by statute, 729.
to state prison, form of, 730.
of death, how executed, 730, 731.
sheriff to be present at execution, 731.
to solitary imprisonment and hard labor, how executed, 737.
SEQUESTRATION,
of property of corporations, 595.
SERGEANT-AT-ARMS,
to be elected for each house, 37.
SERVANTS, 404.
(See *Masters and Apprentices*.)
embezzlement by, 691.
SERVICE,
persons held to in one state, escaping into another, to be delivered up, 13, 798.
of papers, where may be made on sheriffs, 106.
ib. on road companies, 281.
SET-OFF,
by executors, &c., before commissioners, 370.
in suits by executors, &c., 371.
of judgments in justices' courts, 451.
in suits in chancery, 414.
when indivisible, in justices' courts, 467.
balance due on, may be recovered, 467.
in suits on bills of exchange and promissory notes, 503.
verdict in such case, 503.
when allowed in general, 505.
notice to be pleaded or given, 506.
to be given with plea, 506.
judgment on, 506.
allowed against executors, &c., 506.
judgment how rendered against them, 506.
by executors, &c., allowed, 506.
of improvements in ejectment, 568.
SETTLEMENT,
legal, of poor persons, how acquired, 235, 236.
how long to continue, 236.
residence as a pauper, not to give, 236.
of liabilities, by decree of probate court, 358.
SETTLEMENT OF ESTATES OF DECEASED PERSONS,
letters testamentary and other proceedings on the probate of a will, 360 to 362.
letters to be issued to executor, 360.
bond to be given by executor, 360.
ib. by residuary legatee, 361.

SETTLEMENT OF ESTATES OF DECEASED PERSONS,
effect of neglect to give bond, 361.
one executor refusing, letter to be issued to others, 361.
administration during minority of executor, 361.
bond of administrator with will annexed, 361.
marriage of executrix, effect of, 361.
removal of executor, 361.
when remaining executor to execute trust, 361.
when all executors not authorized, those authorized may execute trust, 362.
administrators with will annexed to have same powers as executors, 362.
executor of executor, not to administer, 362.
administration and distribution of estates of intestates, 362 to 366.
how applied and distributed, 362.
what probate court to have jurisdiction, 363.
who entitled to letters of administration, 363.
bonds to be given by administrators, 364.
special administrator, when to be appointed, 364.
his duties, 364.
not to pay debts, &c., 364.
to give bond, 364.
when powers of to cease, 364.
liability of persons for embezzling goods, &c., before letters granted, 364.
when administration with will annexed, to be granted, 364, 365.
removal of administrator, 365.
marriage of administratrix, effect of, 365.
when remaining administrator to execute trust, 365.
when court to appoint administrator of estate not already administered, 365.
his powers, 365.
administration to be revoked on proving will, 365.
powers of executor in such case, 365.
acts of executors and administrators before revocation valid, 365.
notice of application for appointment of administrators, 365, 366.
inventory and collection of effects of deceased persons, 366 to 369.
making and return of inventory, 366.
estate to be appraised, &c., 366.
appointment and oath of appraisers, 366.
how appraisal made and certified, 366.
separate inventory and appraisal of household furniture, &c., 366.
personal estate, first chargeable with payment of debts, 367.
if personal estate not sufficient, real estate to be sold, 367.
executor or administrator to have possession of real and personal estate, 467.
proceeding in case of suspected embezzlement, &c., 367.
when person cited may be committed, 367.
compelling accounts by persons having estate in trust for executor, &c., 367.
when executor, &c., may compound with debtor, 367.
interest in mortgaged premises to be considered personal assets, 368.
executor, &c., may foreclose mortgages 468.
and may give release on redemption, 368.
if premises bid in, for whom executor, &c., to be seized, 368.

SETTLEMENT OF ESTATES OF DECEASED PERSONS,
real estate purchased by executor, &c., may be sold under license, 368.
if not sold, how assigned and distributed, 368.
when suit to be prosecuted to recover lands, &c., fraudulently conveyed by deceased persons, 368.
when executors, &c., not bound to sue, 368, 369.
disposition of estate recovered, 369.
payment of debts and legacies, 369 to 372.
commissioners to examine and adjust claims, when to be appointed, 369.
notice of their meetings to be given, 369.
designation of paper in which notice to be published, 369.
on death, &c., of commissioner, court to appoint another, 369, 370.
time to be allowed for presenting claims, 370.
how long time may be extended, 370.
when commission may be renewed, 370.
when court may examine and adjust claims, 370.
set-offs before commissioners, 370.
commissioners to be sworn, and may administer oaths, 370.
to report to probate court, 370.
what claims they may try and determine, 370, 371.
debts payable at a future day, 371.
persons failing to present claims, when barred, 371.
no suit to be commenced against executors, &c., except ejectment, &c., 371.
actions pending to be prosecuted to judgment, and judgment certified, 371.
executor, &c., not prevented from suing, 371.
set-offs in suits by executors, &c., 371.
joint contract, 371.
appeals from decision of commissioner, 372, 373.
bond on appeal, 372.
in what cases appeal may be allowed, 372.
notice of appeal, and of hearing, 372.
party appealing, to procure and file copy of record, 372.
trial of appeals, 372.
judgment to be certified to probate court, 372.
when claim barred, 372.
when circuit court to affirm allowance appealed from, 373.
in what cases any person interested in estate may appeal, 373.
bond to be given by such persons, 373.
notice in case of appeal by executor, &c., on disallowance of his claim, 373.
limitation of time for paying debts, 373, 374.
order allowing time for payment of debts, &c., 373.
court may extend time, 373.
application for extension, and notice of hearing, 373.
on appointment of new administrator, court may extend time, &c., 374.
distribution of assets among creditors, 374, 375.
when executor &c., to pay debts in full, 374.
order in which debts are to be paid, 374.
when creditors to be paid dividend, 374.
decree for payment and distribution, 374.
decree may be suspended in case of appeal, 374.
when disputed claim ordered to be paid, 374.

SETTLEMENT OF ESTATES OF DECEASED PERSONS,
- further decree for distribution, 374.
- when executors, &c., personally liable to creditor, 375.
- notice of time limited for payment of debts, 375.
- creditor neglecting to demand debt in two years, barred, 375.
- *contingent claims* may be presented to commissioner or to court, 375.
- when court may order sufficient estate retained, for payment of, 375.
- contingent claim becoming absolute, may be presented, &c., 375.
- when claimant entitled to payment, 376.
- claims accruing after time limited for presenting, may be presented to probate court, &c., 376.
- when creditor may recover of heirs, &c., 376.
- defence by executor, &c., to action, 376.
- when defendant discharged, &c., 376.
- to what extent heirs, &c., liable to creditor, 376.
- when devisees and legatees to contribute according to will, 377.
- when all persons liable not included in suit, others may be brought in, 377.
- proceeding in chancery against heirs, 377.
- when estate of deceased heir, &c., liable, 377.
- contribution among heirs, &c., 377
- when creditor not prevented from suing executor, &c., 377.
- no actions to be brought against executors, &c., except those expressly provided for, 377.
- *rendering accounts by executors and administrators*, 378 to 380.
- executor, &c., what to be chargeable with, 378.
- how to account for personal estate, 378.
- not to profit by increase, or lose by destruction, &c., without his fault, 378.
- when sale of personal estate may be ordered, 378.
- executor, &c., to account for proceeds, 378.
- when not accountable for debts due, 378.
- accountable for loss occasioned by neglect, 378.
- when accounts to be rendered, 378.
- compensation to executors and administrators, 379.
- bond may be sued on neglect to render account, 379.
- execution for costs, when to be awarded against executor, &c., 379.
- notice of examining accounts, 379.
- *partition and distribution of estates*, 380 to 383.
- provision for children under seven years of age, 380.
- assignment of residue after payment of debts, 380.
- decree, what to specify, 380.
- no person entitled to share of estate until debts, &c., paid, unless bond given, 380.
- when partition may be made, 380.
- proceedings, when estate lies in different counties, 380.
- notice of application for partition, 381.
- partition, when shares have been conveyed, 381.
- shares, how set out, 381.
- when estate cannot be divided, court may assign the whole to one of the parties, 381.

SETTLEMENT OF ESTATES OF DECEASED PERSONS.
- when tract may be set off to one of the parties, 381.
- when estate of deceased lies in common, to be first severed, 381.
- guardians for minors, &c., and agents for non-residents, 381.
- report of commissioners and proceedings thereon, 382.
- when partition dispensed with, 382.
- questions relating to advancements, how determined, 382.
- appeal from decree for partition, &c., 382.
- when partition conclusive, 382.
- when expenses of partition may be paid out of estate, 382.
- when to be paid by parties, 382.
- when partition of reversion may be made, 382.
- agent to take charge of non-resident's estate, 383.
- to give bond, 383.
- *probate bonds and the prosecution of them*, 383, 384.
- how taken, 383.
- when suit may be brought by creditor on bond of executor, &c., 383.
- when may be brought by next of kin, 383.
- when court may authorize any person interested to sue bond, 383.
- when court may cause bond to be sued, 383.
- suits to be in name of judge of probate, 384.
- when judge may grant permission to sue bond, 384.
- judgment in suit for benefit of particular person, 384.
- judgment in other cases, 384.
- disposition of moneys collected, 384.
- scire facias on judgment, 384.
- claims for damages for breach of condition, by whom may be prosecuted, 384.
- *conveyance of real estate by executors and administrators in certain cases*, 385, 386.
- when probate court may decree conveyance by executor, &c., 385.
- notice of petition and hearing, 385.
- examination of petitioner, &c., 385.
- when decree for conveyance to be made, 385.
- appeal from decree, 385.
- when petition to be dismissed, 385.
- bill in chancery for specific performance, 386.
- decree thereon, 386.
- who to be authorised to make conveyance, 386.
- effect of conveyance, 386.
- certified copy of decree may be recorded, effect of record, 386.
- decree may be enforced by process, 386.
- in case of death of person entitled, his heirs, &c., may commence and prosecute proceedings, 386.

SEVERING PRODUCE,
- punishment for, 695.

SHEBOYGAN COUNTY,
- boundaries of, 56.

SHEEP,
- may be restrained from going at large, 119.

SHERIFF,
- when and how chosen and term of office, 28, 104.
- to hold no other office, and ineligible next term, 28.
- to order special elections, &c., of county officers, 66.

SHERIFF,
  to deliver notices of election, 66.
  when clerk of supervisors may act for, 66.
  to take oath and execute bond, 104, 114.
  to appoint under sheriff and deputies, 105.
  appointments to be in writing, 105.
  to have charge of jail and prisoners, 105.
  to serve process and attend circuit court, 105.
  to preserve the peace, suppress riots, and may call out the power of the county, 105.
  to deliver to his successor, jail, prisoners, writs, &c., 106.
  what process he may retain and execute, 106.
  default of deputy or jailer after death, &c., of sheriff, to be breach of his bond, 106.
  action for default of, may be prosecuted against his executors, 106.
  writs and papers, how may be served on, 106.
  arresting persons in one county may pass through another, 106.
  when not liable to arrest on civil process, 106.
  when fees, to be paid out of state treasury, 106.
  not to practice as attorney or counsel, 107.
  when liable to fine or attachment, &c., 107.
  not to receive greater fees than allowed by law, 107.
  where to keep his office, 113.
  when to keep same open, 113.
  his duty when election laws violated, 133.
  when may collect taxes, and his duties relative thereto, 156, 157.
  proceedings against, if he neglect to make return, or pay over taxes, 157.
  to present the names of persons selling or giving liquors to Indians, 244.
  penalty for neglect, 244.
  process in chancery to be directed to, and his duties in executing same, 414, 415.
  to sell mortgaged premises, and execute deeds, 424.
  to serve process issued by judge of probate, 429.
  ib. by county court, 434.
  suits by and against, in justice's court, 466.
  his duties in serving declaration, 494.
  when to accept bail bond, 498.
  to summon jurors and return venire, 512.
  to indorse receipt of execution, 539.
  execution against, to whom directed, 539.
  his duties in relation to attachments for misconduct, 600, 601.
  his fees, 668, 674.
  return of, on writ, to be evidence of certain facts, 672, 673.
  his duty in relation to gamblers, 707.
  his duty on conviction of criminal, 730.
  not to furnish prisoners with spiritous liquors, 736.
  to keep calendar of prisoners, and what to contain, 736, 737.
  to return copy to court, 737.
  when to furnish tools, &c., to prisoners, 737.
  how to treat unruly prisoners, 737.
  his duty in relation to persons committed under authority of U. S., 738, 739.
  authorized to make sales and execute deeds in certain cases instead of masters in chancery, 762.
SHOPS,
  breaking and entering with intent to commit felony therein, 689, 690.
SHOWS,
  public, 247.
    (See *Public Shows.*)
SIGNATURE,
  written, of person, how may be made, 60.
SLANDER,
  giving notice of truth of words spoken, not to be evidence of malice, 560.
  actions for, to be commenced within two years, 643.
  in action for, when no more costs than damages recoverable, 655.
SLAVERY,
  not to exist in state, 19.
SLAVES,
  seizing person with intent to sell, 687.
  selling negroes, &c., 687.
SMALL POX,
  persons infected with, how removed and taken care of, 230.
  punishment for inoculating with, 711.
SODOMY,
  punishment for, 709.
SOLDIERS,
  when and how may be quartered in houses, 16.
  not to be deemed residents, 23.
  when may dispose of their personal estate by nuncupative will, 354.
SOLICITOR, 107, 675.
  when to pay costs, 414.
    (See *Attorney.*)
SOLITARY CONFINEMENT,
  to precede hard labor, 730.
  how sentence of, executed, 737.
SOVEREIGNTY,
  of the state, to what places to extend, 50.
SPEAKER,
  of house of representatives in congress, 6.
  of the assembly, his duties on election of senator in congress, 78.
SPECIAL MESSENGERS,
  when may be appointed, 73, 75.
    (See *Messengers.*)
SPECIAL TERMS,
  of court, 412. 413.
SPECIFIC PERFORMANCE,
  of contracts, may be compelled, 419, 422.
SPEECH,
  liberty of, 19.
  ib. in debate, 7. 24.
SPENDTHRIFTS,
  appointment of guardians for, 400, 401.
  spendthrift, definition of, 403.
    (See *Guardians.*)
SPIRITUOUS LIQUORS,
  no person to vend same without executing bond, 242.
  bond to be filed, and copy to be evidence, 242.
  married woman may sue on same, 242.
  proof to charge seller with damages, 242.
  when and how seller to be made chargeable for support of paupers, 242.
  when contribution may be compelled against sellers, 242.
  penalty for vending or giving away without executing bond, 243.
  when suits relative to the sale of may be maintained before justices, 243.
  penalty for sale of, to Indians, 243.
  not to be kept for sale, &c., at mouth of Wolf river, 243.
  duty of circuit judges, sheriffs, and constables, in relation to sale of liquors to Indians, 243, 244.
  when not to be furnished prisoners, 736.

STANDARD WEIGHTS AND MEASURES, 260, 261.
- (See *Weights and Measures.*)

STATES,
- powers prohibited to, 9.
- powers that may be exercised with consent of congress, 9, 10.
- new, how may be admitted, 13.
- congress to guarantee to each, republican form of government, and protect from invasion and domestic violence, 13.
- records, &c., of, to be evidence, 12, 13,522.
- ib. of printed copies of laws, 523.
- acts, records and judicial proceedings of each, how authenticated, 800, 801.

STATE,
- of Wisconsin, boundaries of, 21, 50.
- not to interfere with primary disposal of soil, 22, 792.
- nor with regulations of congress securing the title to purchasers, 22, 792.
- not to impose tax on U. S. lands, 22, 792.
- suits against, 25.
- credit of, not to be loaned, 32.
- not to contract debts, except in certain cases, 32.
- sovereignty and jurisdiction of, 50.
- definition of term, 60.
- when to pay costs, 657.
- may be made a party in partition suits,589.
- when lands,water power,&c.,reserved to,768
- an act for the admission of, into the union, 792.

STATE DEBT,
- when may be contracted, 32, 33.
- not to be contracted for internal improvements, 33.

STATE LANDS,
- contracted to be sold, how to be assessed, 139.
- not to be sold for non-payment of taxes, 139.
- not to be conveyed until taxes paid, 139.
- (See *School and University Lands, Improvement of Fox and Wisconsin rivers.*)

STATE LIBRARY, 210.
- (See *Library, State.*)

STATE OFFICERS,
- constitutional provisions relating to, 26,27.
- statutory, ib., 80 to 92.
- (See *Officers.*)

STATE PRISON,
- expenses of convicts sentenced to confinement in, how paid, 735.
- sentence to solitary imprisonment and confinement at hard labor in, how executed, 737.

STATE PROPERTY, 210.
- books, records, deeds, &c., belonging to state, where to be kept, 82, 86.
- (See *Public Property.*)

STATE ROADS,
- how opened and worked, 180.
- when damages allowed for laying out same, 180.
- how may be altered, 180.

STATE SUPERINTENDENT, 33, 76, 88, 89.
- (See *Superintendent of Public Instruction.*)

STATE TREASURER,
- his duties as one of board of state canvassers, 73, 74, 75.
- entitled to copy of laws, 61.
- when to be elected, 76.
- where to keep his office, 85.
- to take oath and give bond, 85.
- his general duties, 85, 86.
- when to give additional bond, 86.
- how to keep books and accounts, 87.

STATE TREASURER,
- one recovery not to cancel his bond, 87.
- his salary, 87.
- to credit counties with moneys paid, 157.
- to be one of commissioners for sale of school lands, &c., 35, 210.
- his duties on application to purchase same, 215, 216.
- to open an account with each purchaser of a tract of school lands, 217.
- fees on sale of school lands, 219.
- to be state sealer of weights and measures, 260.
- to sell telegraph lines for payment of taxes, 306.

STATIONERY,
- for use of state, to be let to lowest bidder, 25.
- for use of county officers, to be furnished by county board, 98.
- when to be furnished by judge of probate, 432.

STATUTES,
- rules of construction of, 58, 59.
- when acts required to be done by, may be done by agent, 60.
- when to go into operation, 60.
- to be published, 60.
- publication and distribution of, 61, 62.
- when general provisions of, applicable to county courts, 436.
- printed, of this state, when to be evidence, 522.
- ib. of other states, &c., 523.
- repeal of, not to affect acts done or rights accrued, &c., 757.
- heretofore repealed to so continue, 757.
- repeal of repealed statutes not to imply that they were in force, 757.
- when conflicting provisions, which to prevail, 758.
- (See *Laws, Revised Statutes.*)

STAY,
- of execution, not allowed on judgment for school moneys, 222.
- ib. in justices' courts, 471.
- of trial, 425
- of proceedings after verdict, 426, 427.
- ib. before judgment, 426.
- ib. after judgment, 426, 427.
- to prevent waste, 583.

ST. CROIX COUNTY,
- boundaries of, 56.

STEALING, 690, 691.
- (See *Larceny.*)

STOCK,
- liable to taxation, 138.
- to be considered personal property, 138.
- where and to whom taxable, 140.
- shares of in road companies, to be personal property, 281.
- capital, in road companies, how may be increased, 287.
- in manufacturing corporations, &c., to be deemed personal estate, 288.
- in same, to be paid in, in money, 288.
- how levied upon and sold under execution, 542.

STOCKHOLDERS,
- in plank and turnpike road companies, liability of, 282.
- may be sued jointly with company, 282, 283.
- may be sued separately, 283.
- liability of, in manufacturing corporations, &c., 288.
- when may be made parties to bill with corporation, 596.

STOCKHOLDERS,
when bill may be filed against, separately, 596.
when compelled to pay on stock held by them, 597.
STOLEN PROPERTY,
buying, &c., knowing it to be stolen, 690.
to be secured, by officer making arrest, &c., 691.
when to be restored to owner, 691.
compensation of officer for keeping, 691.
STONE,
when overseer of highways may dig, 169.
penalty for wilfully digging or carrying away, 696.
STOVES,
when exempt from execution, 541.
STRAYS,
who may take up, 249.
owner to be notified, if known, 249.
how notice given, if owner unknown, 250.
when to be appraised, 250.
when to be restored to owner, 250.
how charges for keeping same settled, 250.
when to be property of finder 250.
when to be sold, and how proceeds to be disposed of, 250, 251.
penalty for taking without consent of finder, 251.
penalty on finder for neglect to advertise, or procure appraisal, 251.
STREETS,
how to be described on town plots, 257.
how same shall be held, 258.
not to be laid through cemeteries, 271.
in villages, how may be improved, 297, 298.
STYLE,
of laws, 24.
of writs and process, 31, 493.
ib., issued by justices, 444.
SUBORNATION OF PERJURY,
procuring one to swear false at elections to be, 131.
punishment of, 700.
SUBPŒNAS,
may be issued by district attorney, 103.
may be issued for witnesses to appear before commissioners in certain cases, 278.
same to prove execution of deed, 328.
penalty for not obeying, 328.
in chancery, not to issue until bill filed, 414.
how tested and made returnable, 415.
how served, 415.
in justices' courts and proceedings thereon, 453, 480, 516.
courts of record may issue, 438.
clerks of court may issue, 516.
justices of the peace may issue, 516.
by whom and how served, 453, 516.
liability of witness for failure to attend when subpœnaed, 516.
to appeal and answer bill for partition, 571.
service of, on attorney general, 580.
to be issued by prosecuting officer, 724.
in justices' court, when no fee allowed for travel in service of, 672.
SUCCESSOR,
in office, may compel the delivery of books and papers, 624, 625.
SUFFRAGE,
legislature may extend the right of, 22.
laws may be passed excluding certain persons from right of, 23.
(See *Voters.*)
SUGGESTION,
of claim, and proceedings thereon to recover damages in action of ejectment, 567, 568.
ib., in favor of person entitled to office, 637.
SUITS,
against state, 25.
tax on, 31, 762.
circuit judges may receive same, 101.
by or against towns to be in name of town, 119.
to recover lands sold for taxes, when to be commenced, 164.
how commenced in justices' courts, 444.
in chancery, when to be dismissed, 413.
by and against infants, 497, 498.
amicable, in county courts, 434, 435.
not to be discontinued by vacancy, failure to hold term, &c., 438.
commencement of in courts of record, 493 to 498.
against counties and county treasurers, where may be brought, 494.
by and against executors and administrators, heirs, &c., 551 to 554.
how brought by board of public works in certain cases, 772.
(See *Actions.*)
SUMMONS,
in justices' courts, 445.
form of, 447.
writ of, how served, 495.
how served on defendant out of state, and non-residents, 495.
ib., against inhabitants of counties, towns, tenants in common, &c., 495.
ib., against corporations, 496.
form of, in suits for forcible entry, &c., 609.
to be issued on information, 636, 638.
SUNDAY,
courts not to transact business on, unless, &c., 440.
when single magistrates may, 440.
labor prohibited on, 710.
what time to include, 710.
civil process not to be served on, 710.
when persons observe other day as, 710.
SUPERINTENDENT OF PUBLIC INSTRUCTION,
how elected, 33.
his powers and duties, 33, 88, 89.
his salary, 33, 88.
entitled to copy of laws, 61.
when to be elected, 76, 88.
his term of office, and when to commence, 88.
to take and file oath of office, 88.
to examine and determine appeals, 89, 199.
to make annual report, 89.
to apportion school moneys and give notice thereof, 89.
where to keep his office, 89.
his decisions, &c., certified, to be evidence, 90.
when not to apportion school moneys to a county, 206.
to cause common school act, &c., to be published and distributed, 744.
SUPERINTENDENT OF PUBLIC WORKS,
board may appoint, 766.
his compensation, 766.
his duties, 767.
SUPERINTENDENTS OF POOR,
when board of county supervisors may elect, 241.

SUPERINTENDENTS OF POOR,
their powers and duties, 241.
(See *Poor.*)
SUPERINTENDENT OF SCHOOLS,
in towns, 119, 195 to 198.
(See *Town Superintendent.*)
SUPERVISORS,
county, 25, 95, 126.
(See *County Supervisors.*)
town, 119, 126, 127, 167.
(See *Town Supervisors.*)
SUPPORT,
of poor, by towns, 235, 236, 239.
ib., by counties, 239, 241.
ib by relatives, 236, 237.
of wife and children, on application for divorce, 396, 398.
SUPREME COURT,
judicial power vested in, 28.
to have appellate jurisdiction only, 28, 410.
its general powers, 28, 29.
circuit judges to be judges of supreme court, 29.
separate supreme court may be formed, 29.
number of judges to constitute a quorum, 29.
number necessary to a decision, 29.
judges of to be classified, 29.
terms of, 30.
to appoint clerk, 30.
judges of, when to meet and adopt rules, 409.
terms of, 409.
may make and amend rules of practice, 410.
power of, to issue writs and process, 410.
powers of in relation to its decrees and jurisdiction, 410.
to be adjourned, if four judges do not attend, 410.
to give decisions in writing, 410.
to appoint a reporter, 410.
may make rules as to certain proceedings in chancery, 419.
appeals to, from courts in chancery, 428.
may award damages on appeals, 428.
to make and amend rules of probate courts, 432, 433.
to review judgments and decisions of county courts, 436.
may make rules respecting taking of depositions, 518, 519, 520.
may grant leave to file information, 638.
what seals to be used in, 761.
when and where to be held, 762.
SURETIES.
of constables, action to be commenced against within two years, 129.
in injunction bond, sufficiency of, how ascertained, 427.
in suit, &c., how may be discharged and sworn as witness, 522.
insufficient, liability of officer for taking, in certain cases, 602.
to keep the peace, &c., 717 to 719.
may surrender their principal, 719.
may be required of convicts in certain cases, 729, 730.
SURGEONS,
may form medical societies, 231.
any person may practice as, though not a member of a medical society, 233.
when not compelled to disclose as witnesses, 526.
SURRENDER,
of principal by surety, 500.
of rights and franchises of corporation, 595.
by sureties to keep the peace, 719.
SURVEYS, 112, 113.
courses to be expressed in, 113.
SURVEYS,
how to be made, 113.
when to be made, of school lands, 218.
of plank and turnpike roads, 276.
of territory, to be incorporated into a village, to be made, 291.
of lands, when may be ordered by court, 585.
how made, 585.
SURVEYOR, 112, 113.
(See *County Surveyors.*)
SURVIVING,
executor or administrator may execute the trust, 361, 365.
of actions, in case of death of one or more parties in suit, 508 to 510.
trustee of a power may execute same, 324.
SWORN,
when shall be construed to include the word "affirmed," 59.
TAVERN KEEPERS,
their duties in relation to unclaimed property, 252, 253.
TAXATION,
rule of, to be uniform, 32.
property liable to, and exempt from, 138, 139.
property of medical societies exempt from, 234.
same of cemetery associations, 271.
of fees of county judge, 437.
of costs, 659.
by whom taxed, 659.
when fees to be taxed, 659.
of costs of foreclosure of mortgages, 660.
duties of taxing officers, 660.
costs not to be entered in record till taxed, 660.
notice of taxation to be given, 660.
by justices of the peace, 672.
TAXES,
direct taxes to be in proportion to census, 9.
not to be laid on articles exported, 9.
nor on land of United States, 22, 792.
non-residents not to be taxed higher than residents, 22, 792.
on suits, 31, 762.
ib. where paid and how applied, 101, 762.
to be levied on such property as legislature shall prescribe, 32.
annual tax to defray state expenses to be levied, 32.
to be apportioned and levied by supervisors, 96.
for specific purposes, when county supervisors may authorize, 96.
property to be taxed, 138.
real estate what to include, 138.
personal estate what to include, 138.
property exempt from, 138, 139, 234, 271.
lands where assessed, 139.
if unoccupied and owner unknown, how to be assessed, 139.
corporate property, where to be assessed &c., 139.
undivided real estate of deceased person, to whom assessed, 139.
personal estate where assessed, 140.
goods kept for sale, stock and machinery, where and how taxable, 140.
partners, how taxed, 140.
stock and personal estate of corporations, where taxed, 140
how taxes on same collected, 140.
when owner of stock not to be taxed for same individually, 140.
personal property mortgaged, to whom assessed, 140.

TAXES,
  what, owner by non-residents, may be assessed, 140.
  duties of assessors, 140 to 146.
  land, how to be described, 141.
  when and how assessment roll to be made, 140, 141.
  form of assessment roll, 142, 143.
  lands omitted, to be assessed, 144.
  assessor may require oath of person giving in list, 144.
  valuation of property may be fixed by affidavit, 144, 145.
  agent or trustee may make such affidavit, 144.
  property to be assessed at its cash value, 144.
  when assessment roll to be completed, 144.
  when and where to be received and corrected, 144.
  when reviewed, if assessor cannot attend on day fixed, 145.
  roll may be altered until certified, 145.
  certificate attached to assessment roll, 145.
  when roll to be delivered to chairman of supervisors, 145.
  if town neglect, county supervisors may make roll, 145.
  equalization of assessments and assessing taxes, 146 to 149.
  duties of assessors in equalizing assessments, 146.
  may alter description of lands, 146.
  when rolls to be delivered to town clerk, 146.
  clerk of supervisors to transmit to secretary aggregate valuations of property, 146.
  state tax, when and how to be apportioned among counties, 146.
  when state tax to be paid into state treasury, 147, 157.
  to be raised for support of schools, 147.
  how, before distribution from school fund, 147.
  apportionment of state and county taxes, 147.
  amount to be raised, how certified by clerk of supervisors, 147, 148.
  when town clerk to deliver statement of taxes to town treasurer, 148.
  county treasurer to file town treasurer's bond, and give receipt, 148.
  town clerk to carry out taxes on roll, 148.
  when to deliver roll to town treasurer, 148.
  warrant to be annexed to roll, 148.
  certain taxes to be charged to town treasurer, 149.
  warrant for collection of taxes in cities, 149.
  collection and return of taxes, 149 to 157.
  town treasurer to call once on person taxed, 149.
  state, to be paid in gold and silver, 150, 157.
  town and county officers not to receive orders in payment of taxes at a discount, 150.
  town treasurer to give receipt for taxes, 150.
  distress and sale, 150.
  how property released, 150.
  when treasurer may re-sell, 150.
  if no bidders, how tax collected, 150.
  when treasurer may collect tax of persons within the county, 151.
  surplus of sale returned, 151.
  treasurer to receive tax on any part of lot, &c., and his duties thereon, 151.

TAXES,
  double assessments, 151, 152.
  state tax to be first paid, 151.
  return of unpaid, 152.
  form of return, 152, 153, 154.
  affidavit annexed to return, 155.
  when county treasurer may issue warrant for collection of, 155.
  when town board may extend time of collecting, 156.
  when to be collected by sheriff, 156, 157.
  how lands may be discharged from, before sale, 157.
  sale of lands for unpaid taxes, conveyances, &c., 157 to 163.
  when lands subject to sale for, 157.
  county treasurer to give notice of sale, 157, 158.
  how notice to be published and posted, 158.
  affidavits of same, 158.
  when sale to commence, and how long to continue, 158.
  how lands to be sold, 158.
  may be re-offered, 159.
  when purchase money to be paid, 159.
  penalty for neglect, 159.
  lands bid off by county, to be taxed, but not sold, 159.
  clerk of supervisors to execute tax deed, 159.
  lands need not be sold as property of any person, 159.
  misnomer, not to vitiate, 159.
  treasurer to issue certificates of sale, 159.
  affidavits, notices and statement of sale, to be filed with clerk of supervisors, 160.
  unredeemed lands, how advertised, 160.
  may be redeemed before tax deed recorded, 160.
  on redemption, all taxes and charges to be paid, 161.
  clerk to execute certificate, and same to be countersigned by county treasurer, 161.
  if certificate lost, board may issue deed, 161.
  if land unredeemed, when certificate to be issued to purchaser, 162.
  effect of deed, 162.
  when returned lands may be withheld from sale, 162.
  when deed may be withheld, 162.
  when and how county board may demand return of deed, 162.
  when uncollected tax may be collected succeeding year, 162.
  improperly paid, when to be refunded, 163.
  costs on two or more parcels to be apportioned, 163.
  to be a lien on lands, 163.
  person having a lien on lands, may pay taxes and collect same, 163.
  provisions as to taxes applicable to towns, to apply to cities, 163.
  loss of, by default of any officer, chargeable to town or city, 163.
  when tenant may recover taxes paid by him, 164.
  if lands not sold on day fixed, when may be afterwards sold, 164.
  if clerk fail to advertise unredeemed lands, when may afterwards advertise, 164.
  when suits to recover lands sold for taxes to be commenced, 164.
  penalty on town treasurer for failing to pay over, 164.
  tax deed invalid, if taxes have been paid, 164, 165.

TAXES,
moneys collected for a specific object; not to be applied to another, 165.
when grantor, and when grantee to pay, 165.
secretary of state to furnish blank rolls, &c., 165.
fees to be allowed officers and printers for services under tax law, 165, 166.
costs and charges to be a lien on lands sold for taxes, 166.
highway, how assessed and collected, 170, 171, 172, 173, 174.
when to be expended, 172.
school, that may be raised at school district meetings, 190.
how assessed and collected, 199 to 201.
village, how collected for improvement of streets, &c., 298.
how general taxes assessed and collected in same, 299 to 301.
highway taxes to be paid by inhabitants of village, 304.
on school and university lands sold, how levied and collected, 224.
property of medical societies exempt from, 234.
ib. of cemetery associations, 271.
to be paid by telegraph lines, 306.
TEACHERS, 198.
(See *School Teachers.*)
TELEGRAPH LINES, ELECTRIC,
who may construct and how, 306.
communications to have precedence in the order they are received, 306.
penalty for violation of this provision, 306.
tax to be paid to state by owners, 306.
state to have a lien on line for tax, 306.
state treasurer may sell same, 306.
penalty for injury to, 306, 307.
TENANCY IN COMMON, 317.
(See *Tenants.*)
TENANTS,
when may recover tax paid by them, 164.
when may recover highway tax of landlord, 172.
same of school tax, 201.
in possession, liable for rent due. 336.
when liable for waste, 581.
holding over, or not paying rent, how may be removed, 607, 608.
by curtesy, 336.
title of, not affected by chap. 63, 340.
when liable to action for waste, 581.
in dower, 333 to 336.
title of, not affected by chap. 63, 340.
(See *Dower.*)
in common, may maintain action against co-tenant, 337.
when may bring joint or several actions, 585.
(See *Joint Tenants.*)
at will or by sufferance, how estates of, may be determined, 337.
when and how may be removed, 607, 608.
for life, estate of, when changed into a fee, 321.
power to make leases may be granted to, 322.
may release the same, 322.
effect of conveyance by in certain cases, 326.
(See *Landlord and Tenant.*)
TENDER,
when may be pleaded, 502.
construction of provisions relative to, 502.
when may be made after suit brought, 502.
how made and effect of same, 502.
TENDER,
plaintiff to give certificate; notice to officer, &c., 502.
TENURE,
of lands, to be allodial, 20.
feudal, prohibited, 20.
(See *Estates.*)
TERMS,
of supreme court, 409, 410.
of circuit courts, 411, 412.
judge of circuit court may appoint one extra jury term, 412.
may hold special and adjourned terms, 412.
chancery terms to be same as common law terms, 413.
court may appoint special chancery terms, 413.
of county court, when and where held, 434.
TERRITORIAL,
limits of state, 21, 50, 789, 792.
government of Wisconsin, act establishing, 778.
TERRITORY,
of United States, congress to make rules and regulations respecting, 13.
of Wisconsin, property of, to vest in state, 33, 38.
officers of, how long to hold office, 38.
an act for the government of, 778 to 785.
acts amendatory thereof, 785 to 787.
an act to enable the people of to form a constitution, &c., 789 to 792.
TESTAMENT, 353 to 359.
(See *Wills and Testaments.*)
TESTE,
of process issuing from circuit court in chancery proceedings, 415.
of writs and process issuing from courts of record generally, 493.
ib., issuing from circuit courts, 760.
TESTIMONY,
in equity, how taken, 31.
court commissioners may take, 104.
of witnesses to be used before probate court, how may be taken, 429.
taking of within this state, 516 to 518.
ib., out of state, 518, 519.
proceedings to perpetuate, 519 to 522.
of witnesses in this state to be used in other states, how taken, 522.
(See *Evidence.*)
THEFT, 23, 690.
(See *Larceny.*)
THREATENING,
communications to extort money, penalty for sending, 687.
TIMBER,
purchaser of school lands not to cut, except for improvements, 213.
fallen, on school lands, may be sold, 224.
drifted, 249,
wilfully cutting or carrying away, 696.
TIME,
as expressed by "month" and "year," "heretofore" and "hereafter," 59, 60.
allowed for presenting claims against estates of deceased persons, 370.
for paying debts of same, 373.
for paying debts and legacies, when may be extended, 374.
wilfully lost by apprentice, to be returned by him, 406.
to declare against defendant arrested, 500.
computation of, under statute of limitations in certain cases, 643 to 646.
TITLE,
of school lands, to remain in state, 213.

TITLE,
- of lands offered in security for loan of school moneys, to be shown by applicant, 220, 222.
- how to vest in state without deed, in certain cases, 223.
- how to vest in lands donated on town plots, 258.
- to lands heretofore conveyed, not to be questioned by alienage of grantor, 337.
- to real property by descent, 338 to 340.
- ib., by special provisions of law, 341 to 352.
- proceedings in chancery to quiet, 417.
- to real estates, may be passed by decree, 418.

TOKENS,
- false, obtaining property by, 693.

TOLL,
- rates of, for grinding, 262.
- receivable by plank and turnpike road companies, 280.
- purchaser of franchise of corporation may receive, 309.

TOMBS,
- exempt from taxation, 139.
- wilful injury to, a misdemeanor, 271.
- fine for mutilating or defacing, 710.

TOOLS,
- of mechanic, &c., exempt from execution, 541.
- punishment for making, &c., or having in possession for counterfeiting, 699.

TORTURING,
- of animals, how punished, 710.

TOWNS,
- to be but one system of government for, 25.
- definition of, 60.
- county supervisors may organize and change boundaries of, &c., 96.
- proceedings on formation of, by county board, 97.
- when organized, names and boundaries of to be transmitted to secretary of state, 100.
- to be bodies corporate, and their powers as such, 118.
- powers of electors of, 118, 119.
- suits, &c., by or against, to be in name of town, 119.
- conveyances for use of inhabitants, to vest in, 119.
- civil actions by or against, may be prosecuted before justices, 119.
- new, when organized, justices in to hold their office, 125.
- when county not divided into, same to be considered as one town, 125, 126.
- may provide and maintain pounds, 137.
- if deficiency of funds in treasury, how same set apart and applied, 151.
- liable to loss of taxes occasioned by default of their officers, 164.
- roads on line between, how laid out and worked, 177.
- when liable for damages occasioned by insufficiency of road or bridge, 183.
- when to relieve and support poor, 235, 239.
- settlements in, how acquired, 235, 236.
- actions by and against, in justices' courts, 466.

TOWN BOARD,
- who shall constitute, 127.
- when to meet, 127.
- their duties, 127, 128.
- not to allow account, unless each item specified, 127.
- to make annual report, 128.
- same to be read, and may be referred, 128.
- may draw town orders, and how, 128.
- town clerk to be clerk of, 128.

TOWN BOARD,
- when may appoint town treasurer, 155.
- when may extend time for collecting taxes, 156.
- may grant licenses for shows and exhibitions, 247.
- may regulate same, 247.

TOWN CLERK,
- to give notice of elections, 66.
- to act as clerk of elections, 67.
- to be elected, 119.
- his duties in calling special town meetings, 120.
- to subscribe and file minutes of town meetings, 121.
- to be clerk of town meetings, and his duties as such, 121.
- if absent, another may be appointed, 121.
- his duties on completion of canvass at town meeting, 123.
- when to give special notice to persons elected to town office, 124.
- his duties on drawing of lots by justices, 125, 130.
- his general powers and duties, 126, 127.
- to transmit notice of election of justices and constables to clerk of circuit court, 126, 127.
- may appoint deputy, and his powers and duties, 127.
- copies of papers, &c., certified by, to be evidence, 127.
- to post copies of by-laws and make entry of same, 127.
- to execute conveyances of land for town, 127
- his duties in relation to accounts, 128.
- to countersign town orders, 128.
- to be clerk of town board, 128.
- his compensation, 131.
- to deliver to town treasurer certified statement of taxes, 148.
- to calculate and carry out taxes in assessment roll, 148.
- when to deliver roll to town treasurer, 148.
- to annex warrant thereto, 148.
- to make memorandum thereof, and charge town treasurer with taxes, 149.
- to give notice of appointment of town treasurer, 155.
- when to deliver tax list and warrant to sheriff, 156.
- to make duplicate list of highway taxes, 171.
- to enter same on assessment roll, 174.
- his duties in relation to school district taxes, 201, 202.
- other duties in relation to school districts, 202.
- same, in relation to judgments against districts, 204.
- same, in relation to marks and brands, and filing chattel mortgages, 254, 255, 389.
- his fees for services in relation thereto, 255.
- when may certify nomination of guardians for minors, 399.

TOWN MEETINGS,
- when place where first held, to be designated, 97.
- powers of electors at, 118, 119.
- annual, when and where to be held, 119.
- officers to be elected at, 119.
- who entitled to vote at, 119.
- when and how place of holding may be adjourned, 119, 120.
- may be adjourned to another day, except for election of officers, 120.
- when first, in new town, may be held, 120.
- how same to be conducted, 120.

- TOWN MEETINGS,
  - special, in new towns, when and how may be called, 120.
  - oaths to officers of, how administered, 120.
  - special, when held, and how may be called, 120.
  - minutes of proceedings of, to be subscribed and filed, 121.
  - notice of annual, not necessary, 121.
  - persons elected to supply vancancies in board, to be sworn, 121.
  - business to be stated at opening of, 121.
  - order in which business to be conducted at, 121.
  - polls, when to be opened and closed, 121.
  - manner in which officers are to be elected at, 122.
  - challenges, 122.
  - powers and duties of chairman, 122.
  - motions to be determined by majority of electors voting, 122.
  - ballots, how to be received and kept, 122.
  - rules and regulations made by, to be recorded, 126.
  - may raise moneys for improvement of roads and bridges, 168.
- TOWN OFFICERS, 119.
  - how to be elected, 37.
  - when to be elected, 119.
  - special town meetings for the election of, 120.
  - how chosen, 122.
  - names of, to be on one ballot, 122.
  - what to be deemed notice of election to, 123.
  - who eligible, 123.
  - to take and file oath of office, 123.
  - when special notice of election shall be given to, 124.
  - what shall be deemed a refusal to serve, 124.
  - penalty for entering upon duties of office without filing oath and bond, 124.
  - when liable for neglecting to serve, 124.
  - how long to hold office, 124.
  - when elected to fill vacancies, how long to hold, 124.
  - penalty for not delivering to successor, moneys, books, &c., 124.
  - who shall be deemed to be elected, 123.
  - when vote equal, choice to be determined by lot, 123.
  - appointed to fill vacancies, to take oath and file bond, 124, 125.
  - when may be elected by counties, 125, 126.
  - their compensation, 131.
  - not to purchase town and county orders at a discount, 150.
- TOWN ORDERS,
  - town board may draw, 126.
  - how issued, 128.
  - receivable in payment of town taxes, 128, 150.
- TOWN PLOTS,
  - to be made and recorded, 257, 258.
  - land marked on as a donation, to vest title, 258.
  - those heretofore laid out, to be recorded, 258.
  - how may be vacated or altered, 259.
  - penalty for selling lots, until plot made and recorded, 259.
- TOWN SUPERVISORS,
  - to be inspectors of elections, 67.
  - when to act as county supervisors, 95.
  - chairman of, to be chairman of town meetings, 121.
  - to be board of inspectors, 121.
  - their powers at town meetings, 122.
- TOWN SUPERVISORS,
  - when may accept resignation of town officer, 124.
  - when may make appointments to fill vacancies, 124.
  - when may appoint town treasurer, 125.
  - their general powers and duties, 126.
  - to be commissioners of highways and overseers of poor, 126, 167, 236.
  - chairman to attend meetings of county board of supervisors, 126.
  - if unable, who to attend as his substitute, 126.
  - to prosecute suits for town, and sue for penalties, 126.
  - two shall constitute quorum, unless otherwise provided, 126.
  - to constitute town board, 127.
  - to approve sureties of justices, 130.
  - to have care and superintendence of highways and bridges, 167.
  - their general powers and duties as overseers of highways, 167.
  - to lay out and discontinue roads, 168.
  - to render annual report to town auditors, 168.
  - to cause guide posts to be erected, 169.
  - when and how may appoint overseer of highways, 170.
  - to prosecute same for penalty incurred, 170.
  - when to assess highway taxes, 170.
  - how to make assessments, 170, 171.
  - to annex warrant to tax list, 171.
  - may credit persons working on private roads, or annex same, 171.
  - when to issue warrant to bring up overseers of highways, 170.
  - their duties in laying out roads, 175, 176.
  - not to act when interested, 178.
  - when may administer oaths, 178.
  - when to lay out roads, &c., pursuant to decision of commissioners, 179.
  - how may alter United States, territorial or state roads, 180.
  - when liable to pay damages and costs in proceedings for removing encroachments, 182.
  - may post notices on bridges, 183.
  - when to appraise school lands and improvements thereon, 217.
  - their duties as overseers of the poor, 236, 239.
  - when to compel relatives to support poor, 236, 237.
  - their duties when certain relatives of poor persons abscond, 237, 238.
  - when and how may bind out minors, 238, 239.
  - their duties when a pauper has a legal settlement in another town, 239, 240.
  - liability for neglect, 240.
  - to report to town meeting expenditures for support of poor, 240.
  - when to prosecute suits in cases of bastardy, 246.
  - may compromise with putative father of bastard, 246.
  - may form road districts in villages, and assess highway taxes therein, 304.
  - when to approve of sale of real estate of ward, 350.
  - chairman of, when to prosecute for fines and penalties, 623.
  - when to give notice to district attorney of penalty or forfeiture incurred, 623.
- TOWN SUPERINTENDENT,
  - when and how chosen, 119.
  - his compensation, 131.

- TOWN SUPERINTENDENT,
  - to take oath of office, 123.
  - to prepare notice of formation of school district, 188, 189.
  - to execute bond, 195.
  - his general powers and duties, 195, 196.
  - to make annual report to clerk of supervisors, 196.
  - penalty for neglect, 204, 205.
  - when not to apportion school or library moneys to district, 196, 197.
  - to keep and render account of moneys, 197.
  - when to bring suit on bond of predecessor, 197.
  - to have powers of a corporation, for certain purposes, 197.
  - his fees, 197.
  - how to apportion school moneys when district altered, &c., 197.
  - to examine teachers, 198.
  - may annul certificate, 198.
  - to visit schools, and his duty as visitor, 198.
  - his powers and duties in formation of school districts, 198, 199.
  - may sell grass and fallen timber on school lands, 224.
- TOWN TREASURER,
  - to be elected, 119.
  - when may be appointed by town board, 125, 155.
  - to take oath and file bond, 125, 128.
  - his general duties, 128, 129.
  - to be collector of taxes, 129.
  - to execute bond to county treasurer, 148.
  - to deliver receipt thereof to town clerk, 148.
  - how to proceed in collection of taxes, 149.
  - to call once on person taxed, 149.
  - to give receipts for taxes, 150.
  - penalty for returning tax, if paid, 150.
  - levy and sale, 150.
  - when may re-sell, 150.
  - how tax collected if no bidders, 150.
  - when may collect of person within the county, 151.
  - to receive tax on part of lot, &c., 151.
  - his duties in such case, 151.
  - double assessments, 151, 152.
  - his fees, 151, 155.
  - how to pay out moneys collected, 151, 152.
  - when to set apart town funds, and how to pay same, 151, 152.
  - how to return unpaid taxes, 152.
  - form of return, 152, 153, 154.
  - to make affidavit thereto, 155.
  - when bond to be cancelled, 155.
  - warrant to be delivered to person appointed, 156.
  - proceedings against, for neglect to pay over moneys, 156.
  - to draw town moneys from county treasury, 163.
  - penalty on, for failure to settle, or pay money into county treasury, 164.
  - for false return, or fraudulent act, 164.
  - to notify overseer, of road moneys in treasury, 174.
  - to sue overseer for neglect to pay over moneys, 175.
  - when to sue finder of lost money and goods for half the value thereof, 251.
- TRADE,
  - regulations of in certain cases, 260 to 264.
  - apprentice not to be bound not to set up, 406, 407.
- TRANSCRIPTS,
  - of the record of conveyances, &c., effect of as evidence, 329.
- TRANSCRIPTS,
  - of judgments in justices' courts, 468, 469.
  - from justices' docket, when evidence, 527.
- TREASON,
  - against *United States* in what it shall consist, 12.
  - against *this state*, what constitutes, 20.
  - evidence necessary to convict, 12, 20.
  - person convicted of, disqualified as an elector, 23, 63.
  - if he shall vote, how punished, 132.
  - petit treason and murder, distinction between abolished, 713.
- TREASURER, STATE, 27, 85 to 87.
  - (See *State Treasurer.*)
- TREASURER, COUNTY, 108 to 110.
  - (See *County Treasurer.*)
- TREASURER, TOWN, 119, 128, 129.
  - (See *Town Treasurer.*)
- TREASURER OF BOARD OF PUBLIC WORKS,
  - how and when appointed, and to give bond, 769.
  - his salary, 769, 770.
  - who not to hold office of, 770.
  - his duties, 770.
  - governor may remove, 773.
- TREASURY, STATE,
  - no money to be drawn from for religious societies or seminaries, 21.
  - where to be kept, 85.
  - how moneys to be paid from, 85, 86.
  - fiscal year for, when to commence and close, 86, 87.
- TREASURY, COUNTY,
  - where to be kept, and when kept open, 113.
  - order in which county orders shall be paid, 109.
  - (See *County Treasurer.*)
  - penalties recovered for breach of law relative to unauthorized banking to be paid into, 256.
  - same of penalties collected under law for protection of hedges, fences, &c. 257.
- TREES,
  - when overseer of highways may cut, 169.
  - damages for, may be appraised, 169.
  - fallen into highway, who to remove, 182.
  - penalty for falling same into highway, 182.
  - standing in highway, to whom to belong, 183.
  - may be planted on side of, 183.
  - penalty for injury to same, 184.
  - fruit and ornamental, penalty for injury to, 257, 695.
  - injury to other trees, 696.
- TRESPASS,
  - on lands, limitation of action, 643.
  - in gardens, orchards, &c,, 695.
  - on public lands and, duty of certain officers in relation thereto, 696.
  - on the case, for what injuries may be brought in justices' courts, 449.
- TRIAL,
  - by jury, right of, 17.
  - in circuit court, on appeals from commissioners to examine claims, &c., 372.
  - in justices' courts, 454 to 456.
  - ib., in criminal cases, 485.
  - injunctions to stay, 425, 426.
  - in county courts, how had, 435.
  - of cause, when judge interested, 437.
  - *of proceedings before*, 724, 725.
  - (See *Indictments.*)
  - *in criminal cases*, 725 to 727.
  - issues of fact, how tried, 726.
  - grand juror not to be petit juror, 726.
  - how many challenges allowed, 726.

TRIAL,
  peremptory challenges, 726.
  what to disqualify jurors in capital cases, 726.
  oaths of jurors, 726.
  when defendant to be present, and when may be absent, 727.
  view may be ordered, 727.
  when convicted of part of offence charged, 727.
  when jury may acquit of felonious intent and convict of assault, 727.
  when acquitted by reason of insanity, 727.
  person acquitted not liable for fees, 727.
  defects of form not to vitiate indictment, 727.
TROVER,
  action of, in justice's court, 449.
TRUSTS, 318 to 320.
  certain abolished, 318.
  active trusts, 318.
  express, for what purposes may be created, 319.
  certain devises in trust, to be deemed powers, 319.
  interest remaining in grantor of express trust, 320.
  effect of omitting trust in conveyance, 320.
  when to be executed under direction of court of chancery, 320.
  (See *Uses and Trusts.*)
TRUST POWERS,
  general and special, defined, 322.
  when imperative, 323.
  when irrevocable, 324.
  how construed and executed, 323.
  chancery, when to execute, 323.
  subject to certain rules of law applicable to trusts, 323 to 325.
  when creditors may compel execution of, 323.
  how affected by general assignment for benefit of creditors, 323.
  remedy in case of defective execution of, 325, 326.
TRUSTEES,
  personal property held by, where taxable, 140.
  names of, how to be entered in the assessment roll, 141.
  may reduce valuation of property by affidavit, 144.
  of religious societies, their election, powers, &c., 265, 266, 268.
  of cemetery associations, how elected and classified, 269, 270.
  their powers, 270.
  of manufacturing corporations, &c., their election and powers, 286, 287.
  same of incorporated villages, 293 to 300.
  trustees of estate for use of another, to take no interest, 318.
  qualification, 318.
  of express trusts, to have whole estate, 319.
  qualification, 319.
  certain sales, &c., by, void, 320.
  other persons not affected by misconduct of, 320.
  when estate of, to cease, 320.
  on death of surviving, how trust executed, 320.
  when and how may resign, 320.
  when and how may be removed, 320.
  how their places may be supplied, 320.
  may be appointed to receive moneys for support of wife and children, 396, 397.
  when insane, guardian may apply to convey, &c., 422.
TURNPIKE ROADS, 273 to 286.
  malicious injury to, 695.
  (See *Plank and Turnpike Road Companies.*)
UNAUTHORIZED BANKING,
  corporations not to exercise banking powers unless authorized, 255.
  bills, notes, &c., not to be issued or put in circulation as money, unless authorized by law, 256.
  same payable for less than one dollar, or otherwise than in money, not to be given or received in payment as money, 256.
  penalties imposed for, to be paid into county treasury, 256.
UNCLAIMED PROPERTY, 252.
  description of, to be entered in book, 252.
  when and how owner to be notified of reception of, 252.
  when may be sold, 252.
  how notice of sale to be given, 252.
  proceedings in making sale, 252, 253.
  costs and charges to be paid, and balance paid into county treasury, 253.
  owner may receive amount deposited within five years, 253.
  if not claimed within that time, same to belong to county, 253.
  if perishable, when and how sold, 253.
  fees of justices and constables in relation to same, 254.
UNDER SHERIFF,
  sheriff to appoint, 105.
  to be a general deputy, and when to act as sheriff, 105.
  appointment and revocation to be in writing, 105.
  his general powers and duties, 105, 106, 107.
  not to act as attorney or counsel, 107.
UNIFORM COMPANIES,
  how may be organized, 227.
  to elect officers, 227.
  directors of may purchase and convey real and personal estate, 227.
  may make by laws and sue for and collect fines, 227.
  powers and duties of directors, 227, 228.
  where and how property of state in care of, to be kept, 228.
  powers and duties of captain, 228.
  treasurer to be elected, and his duties, 228.
  when may be furnished with state arms and ordnance, 228.
  when governor shall require return of same, 228.
UNITED STATES,
  this state not to interfere with the primary disposal of the soil by, 22, 792.
  certain propositions irrevocable without consent of, 22, 792.
  no tax to be imposed on lands of, 22, 792.
  what deemed to include, 60.
  places ceded to, to have concurrent jurisdiction over, 50.
  roads, how opened and worked, 180.
  rights of purchasers from, in certain cases, 417.
  records, &c., of, to be evidence, 522.
  ib. of printed copies of laws, 523.
  lands, actions by persons holding claims on, 610, 611.
  duty of sheriffs and jailers in relation to persons committed under authority of, 738.
  to pay for support and keeping of prisoners, 738.
  laws of, extended over this state, 790.
UNIVERSITY,
  state, where to be established and name of, 34, 186.

UNIVERSITY,
- entitled to copy of laws, 61.
- its object, 186.
- government of, to be vested in a board of regents, 186.
- members of board to be divided into three classes, 186.
- their term of office and when elected, 186.
- vacancies, how filled, 186.
- regents to be a body corporate, 186.
- to appoint certain officers, 187.
- may enact by-laws, elect a chancellor, &c., 187.
- chancellor to be president of board, 187.
- to consist of four departments, 187.
- regents may regulate course of instruction, prescribe books and confer degrees, &c., 187.
- may remove officers, 187.
- admission fee and charges for tuition, 187.
- site and buildings, 187.
- annual report of regents, 187.
- meetings of board and quorum, 188.
- colleges may be received as branches, 188.
- no religious test required of professors, teachers or students, 188.
- repeal of former act in relation to, 188.

UNIVERSITY LANDS, 34, 35, 210 to 226.
(See *School and University Lands.*)

UNIVERSITY FUNDS,
- of what to consist, 34, 220.
- interest of, how to be appropriated, 34, 35, 220.
- portion of interest may be expended in erecting buildings, and purchasing apparatus, &c., 187.
- to be loaned, and how, 220 to 224.

UNKNOWN,
- owner of unclaimed property, 252.
- defendant may be sued by fictitious name, 445, 495.

UNLAWFUL ASSEMBLIES,
- what officers to suppress, 105, 703.
- punishment for refusing to assist, 704.
- neglect of officers, how punished, 704.
- officers may use force, 704.
- armed force when called out, to obey orders of governor, &c., 704.
- officers guiltless though death ensue, 705.
- riotously destroying house, 705.

UNLAWFUL DETAINERS, 225, 605 to 610.
(See *Forcible Entries and Unlawful Detainers.*)

UNOCCUPIED,
- lands, if owner unknown, how assessed, 141.

UNORGANIZED COUNTY,
- how to be governed, 92.
- for judicial purposes, to be deemed within the county to which attached, 92.
- certain papers belonging to, where to be filed, 130 to 131.

UNWHOLESOME PROVISIONS,
- penalty for selling without notice, 711.

UNWRITTEN LAWS.
- of other states and countries, how proved, 523.

USES AND TRUSTS,
- certain, abolished, 318.
- executed uses, confirmed, 318.
- active trusts, not affected by certain provisions, 318.
- trustees of estate for use of another, take no interest except, &c., 318.
- not to result, in cases where consideration paid by another, 318.
- exception in favor of creditors, &c., 318.
- purchasers in good faith, not affected by implied trust, &c., 318.
- express trusts, for what purposes may be created, 319.

USES AND TRUSTS,
- certain devises in trust, to be deemed powers, 319.
- profits of land held in trust, liable to creditors in certain cases, 319.
- when express trusts to be powers in trust, 319.
- when land to descend subject to the execution of a trust, 319.
- trustees of express trusts, to have whole estate, 319.
- exception, 319.
- interest remaining in grantor of express trusts, 320.
- powers of party interested over trust, 320.
- effect of omitting to recite trust in conveyance, 320.
- certain sales, &c., by trustees, void, 320.
- who not affected by misconduct of trustees, 320.
- when estate of trustees to cease, 320.
- under whose direction trust to be executed on death of surviving trustee, 320.
- resignation of trustees, 320.
- places of trustees resigning or removed, how supplied, 320.
- trusts and powers concerning lands, to be in writing, 388, 390.

VACANCIES,
- in representation in congress, how filled, 6.
- when special elections may be held to supply, 64.
- notice of certain, to be transmitted to governor, 67.
- vacancies in state and county offices, how may be filled, 76.
- persons elected to fill, when to enter upon duties of their office, &c., 76.
- what events shall create, 115.
- when governor may declare certain offices vacant, 115.
- when governor may fill in certain offices, 116, 117.
- persons appointed to fill, to qualify, 116, 117.
- in town offices, may be filled at special town meetings, 120.
- in board of inspectors, how may be filled, 67, 121.
- when board of town supervisors may fill, 124, 125.
- in office of trustee of religious society, how filled, 267.
- same, of trustees in cemetery associations, 271.
- same, of officers in incorporated villages, 294.
- in office of judge, not to discontinue proceedings, &c., 438.

VACATION,
- power of circuit judges in, 412.

VALUATION,
- of property in assessment roll, to be at cash value, 144.
- may be fixed by affidavit, 144, 145.
- of real estate, to be equalized, 146, 200.

VARIANCE,
- between process, pleadings, &c., when to be disregarded, 530, 531.

VEGETABLES,
- entering gardens, &c., with intent to carry away or injure, 695.

VENDOR AND PURCHASER, 387 to 390.
(See *Fraudulent Conveyances and Contracts.*)

VENIRES,
- in county courts, 435.
- in justices' courts, 455, 456, 485.

VENIRES,
  when judges of circuit court may award special, 413.
  in circuit courts, 512.
  imperfections and defects in, may be amended, 530.
  omitting to award same on record may be supplied, 530.
VENUE,
  change of, in county court, how made, 437.
  ib. in general, for what causes and how made, 507.
  when court may award change without application, 507.
  duty of clerk to transmit papers, &c., 507.
  on change of, costs to be taxed, and abide event of suit, 507.
  in criminal cases, where to be, 725.
  change of, in criminal cases, 725.
    (See *Change of Venue.*)
VERDICT,
  injunctions to stay proceedings after, 426.
  in justices' courts, 456, 486.
  when not to be set aside for irregularity, 514.
  certain defects to be disregarded after, 530, 531.
  non-suit, not after, 534.
  in ejectment, 565.
  in replevin, when part of property found in plaintiff and part in defendant, 616.
  form of, in suits for forcible entry, &c., 610.
  in what cases of homicide, to be not guilty, 683.
VESSELS,
  bound to or from one state to another, not to pay duties, &c., 9.
  proceedings for the collection of demands against, 603 to 605.
    (See *Boats and Vessels.*)
VIBRATING STEELYARDS,
  to be sealed, &c., 261.
VICE PRESIDENT,
  to be president of Senate, 6.
  when to act as president, 10, 18.
  mode of electing, 17, 18.
  who ineligible to office of, 18.
VIEW,
  of premises, &c., by jury in civil cases, 514.
  expenses of, when to be taxed as costs, 514, 515.
  in criminal cases, by jury, 727.
VIEWERS,
  fence, 134, 135, 136.
    (See *Fence Viewers.*)
VILLAGES, 35.
  officers of, how to be elected, 37, 293.
  when and how may be laid out on school lands, 218.
  lots in, how to be sold, 218.
  president and trustees of, to constitute board of health, 229.
  may grant licenses for shows and exhibitions, 247.
  of the incorporation of, 290.
  what territory may be incorporated into, 290.
  survey and map to be made, 290.
  census to be taken, 291.
  survey, map and census, where to be left, 291.
  notice of application to court, 291.
  how published, 291.
  application to court, how made, 291.
  order of court incorporating village, 292.
  notice of meeting of electors, and publication of same, 292.
VILLAGES,
  polls, how held, &c., 292.
  inspectors to preside, and meeting how conducted, 292.
  who may vote, and how, 292, 293.
  when to be deemed a village and when not, 292.
  duties of inspectors of elections, 292, 293.
  meetings, where held, and polls, when opened and closed, 293.
  how elections to be conducted, 293.
  who eligible to office, 293.
  tie, to be determined by lot, 293.
  officers to be elected, and their term of office, 293.
  when annual election to be held, 293.
  president and trustees to be the board, 293, 294.
  to elect clerk, treasurer and marshal, 294.
  officers to be sworn, 294.
  special meetings, how called, 294.
  vacancies, how filled, 294.
  powers of board of trustees, 294 to 296.
  may impose fines and remit same, 296.
  affidavit of publication and posting notices, 296.
  accounts and claims, how audited and allowed, 296, 297.
  same to be made out and sworn to, 296, 297.
  to be numbered and entered, 297.
  what accounts shall not be allowed, 297.
  how to be paid, 297.
  same with affidavit and warrant, to be filed, 297.
  warrants, how drawn, &c., 297.
  not to borrow money, 297.
  what amount of debt may incur, 297.
  streets, how may be improved, and taxes levied therefor, 297, 298.
  same of side-walks, 298.
  how taxes for improvement of streets, &c., may be paid in labor, 298.
  when and how tax list for same returned, 298.
  if unpaid, how collected, 298.
  assessment of damages on opening and widening streets, &c., 298, 299.
  how same collected, 299.
  when trustees to determine amount of taxes to be raised, 299.
  when assessors to assess property and complete roll, 299.
  how same to be made out, 299.
  notice of completion of same to be given, 299.
  compensation of assessors, 299.
  trustees to complete roll and issue warrant, 300.
  warrant, by whom to be signed and what to contain, 300.
  same may be renewed, 300.
  marshal to execute bond, 300.
  his compensation, 300.
  to give notice of time and place taxes are to be paid, 300.
  when same to be collected by distress and sale, 300.
  marshal to pay over money and return warrant, 300.
  his general powers and duties, 303.
  when and how treasurer to advertise lots on which taxes are not paid, 301.
  when and how to sell same, and give certificate, 301.
  to file with clerk all papers relative to tax sales, 301.
  when treasurer to execute deed to purchaser, 301.

VILLAGES,
effect of same, and how executed, 301.
treasurer to give notice of forfeiture of lots, 302.
fees on advertisement and sale of same, 302.
taxes paid by purchaser, to be refunded on redemption, 302.
general duties of treasurer, 302.
to execute bond, 302.
how to keep his accounts, 302, 303.
when to exhibit same, with vouchers, &c., 303.
his compensation, 303.
clerk of, his general duties, 303.
his compensation, 303.
duties of fire wardens, 304.
of street commissioners, 304.
inhabitants, liable to ordinary highway taxes, 304.
trustees to publish annual statement of claims allowed, 304.
general laws to apply to villages, 304.
proceedings on application to dissolve village corporation, 304.
may be formed by town supervisors into road districts, 304.
proceedings if corporation dissolved, 305.
records, &c., where to be deposited, 305.
town supervisors to be trustees of village property, &c., 305.
tax to pay debts may be raised after corporation dissolved, 305.
provisions of this chapter to apply to villages now incorporated, 305.
trustees to publish notice of adoption of same, 305.
VOTERS,
who qualified, 22, 23, 63.
who disqualified from being, 23, 36, 63.
punishment of for illegal voting, 132.
at school district meetings, 189.
qualification of, at elections by religious societies, 267.
(See *Electors.*)
VOTING,
when to be by ballot, 23, 68.
illegal, persons how punished for, 131, 132, 133.
punishment for procuring same, 132.
VOUCHER,
in actions relating to land, abolished, 586.
but landlord, &c., may defend, 586.
WAGERS,
persons interested in, when disqualified as electors, 23, 63.
(See *Betting and Gaming.*)
WALWORTH COUNTY,
boundaries of, 57.
WARD, 398 to 404.
not entitled to vote, 23, 63.
sale of lands of, and investment of proceeds for their use, 341, to 344.
ib., for payment of debts, 350, 351.
of court, when infants to be deemed, 420.
(See *Gunrdians.*)
WAREHOUSEMEN,
their duties in relation to unclaimed, property, 252 to 254.
embezzlement and fraudulent conversion, &c., by, 692.
making fraudulent receipts, &c., 693.
WARRANT,
for town, school or road taxes, when county supervisors may issue or renew, 96.
for collection of taxes, 148, 149.
when county treasurer may issue, 155, 156.
for collection of road taxes, 171.
may be once re-issued, 173.
WARRANT,
for collection of school taxes, who to issue, 194, 200.
where may be executed, 201.
may be renewed, 201.
for payment of claims, how drawn by trustees of villages, and same to be filed, 297.
for the collection of village taxes, how made out and issued, 300.
may be renewed once, 300.
WARRANTS,
how issued in proceedings against absconding father, &c., 238.
how same executed and returned, 238.
how issued and executed, in proceedings relative to support of bastards, 244, 246.
same may be executed in any part of the state, 246.
when may be issued against corporations, 309, 310.
for assignment of dower, 334.
to apprehend apprentices, 406.
judge of probate may issue, 429.
in justices' courts, 445, 484, 487, 488.
form of, 447, 489.
on judgment to abate nuisance, 583.
against boats and vessels, 603.
in proceedings to obtain sureties of peace, 717.
for the arrest and examination of offenders, 719, 720.
in what counties to be executed, 720.
on conviction for capital offence, 730.
to be returned by sheriff, 731.
WARRANT OF ATTORNEY,
when verdict or judgment shall not be affected for want of, 530, 531.
when not necessary to file, 441.
to confess judgment, 535, 536.
need not be entered in any record, &c., 441.
to commence suit in ejectment, 564.
WASHINGTON COUNTY,
boundaries of, 57,
WASTE,
when purchaser of school lands liable for, 213.
penalty for, on lands mortgaged for school moneys, 222.
tenant in dower not to commit, 335.
guardians, tenants, &c., liable to action for, 581.
when tenant liable after granting his estate, 581.
joint tenants, and tenants in common liable for, 581.
suits for, by heirs, 581.
by whom action may be brought, 581.
judgment, 581.
staying the commission of, after commencement of action, 581.
ib., after attachment or execution levied, 582.
action for, of land sold by execution, 582.
certain acts not waste, 582.
violation of order for staying, how punished, 582.
notice to show cause, 583.
warrant of commitment, 583.
how warrant to be executed, 583.
when defendant to be discharged, 583.
equity jurisdiction, of circuit courts, 583.
limitation of action for, 643.
WAUKESHA COUNTY,
boundaries of, 57.
WEAPONS,
dangerous, when person going armed with, may be required to find sureties, 719.

- WEARING APPAREL,
  - widows to be allowed articles of, 362.
  - exempt from execution, 541.
- WEIGHTS AND MEASURES,
  - congress to fix standard of, 8.
  - what to be the public standards of, 260.
  - who to be sealers of, 260.
  - board of supervisiors of each county to procure, 260.
  - when to be proved and sealed, 260, 261.
  - when clerk of supervisors shall provide same, 261.
  - fees of county treasurer, for sealing, 261.
  - penalty on sealer for neglect of duty, 261.
  - steelyards when used, to be proved and sealed annually, 261.
  - what to constitute 100 weight implied in contracts, 261.
  - standard weight of commodities sold by the bushel, 261.
  - half bushel to be standard measure for certain commodities, 261.
  - same to be heaped, 261.
- WHEAT,
  - standard weight of, 261.
- WIDOWS,
  - entitled to dower, 333 to 336.
  - how long may remain in dwelling house and have sustenance, 335.
  - when deemed to have elected to take jointure, 335.
  - when to recover damages for withholding dower, 335, 336.
  - when estate of her husband shall descend to, 338.
  - allowance for maintenance of, 357.
  - wearing apparel, ornaments, &c., to be allowed to, 362.
  - entitled to letters of administration, 363.
- WIFE,
  - suits by and against, for divorce, 393 to 398.
  - may sue for divorce in her own name, 395.
  - when entitled to her real estate on divorce, 396.
  - restoration of her personal estate to, on divorce, 396.
  - when entitled to dower on dissolution of marriage, 397.
  - alimony to, on divorce, 397, 398.
  - when admitted to defend, if husband will not, 584.
  - when may have action of ejectment after default of husband. 584.
  - punishment for maliciously burning property of husband, 689.
- WILLS AND TESTAMENTS,
  - to include codicils, 60.
  - definition of, 60.
  - power may be granted by devise in, 323.
  - how such will to be executed, 324.
  - when power to devise may pass by, 325.
  - of real and personal estate, 353 to 359.
  - who may devise lands, &c., 353.
  - construction of devise, 353.
  - estate in lands acquired after making will, 353.
  - who may bequeath personal estate, 353.
  - how wills to be executed, 353.
  - nuncupative wills, how made and proved, 354.
  - when legacy, &c., to subscribing witness, void, 354.
  - when share of estate to be saved to subscribing witness, 354.
  - revocation of, 354.
  - when may be deposited with judge of probate, 355.
  - how kept and disposed of, by judge, 355.
- WILLS AND TESTAMENTS,
  - duty of judge and others having custody of, 355.
  - presentation of, by executor, to probate court, 355.
  - liability of persons having custody of, for neglect to deliver same to probate court, &c., 355.
  - notice of time and place of proving, 355.
  - when probate of, may be granted on testimony of one witness, 356.
  - when other than subscribing witnesses may be admitted to prove, 356.
  - effect of proof and allowance of, in probate court, 356.
  - proved and allowed in other states and countries, may be allowed and recorded, 356.
  - provision for children born after making of, 356, 357.
  - ib., when neglect to make provision unintentional, 357.
  - when issue of deceased legatee to take estate, 357.
  - testator's estate liable for payment of debts, 357.
  - estate designated by will for payment of debts, &c., to be appropriated for that purpose, 357.
  - allowance for maintenance of widow, 357.
  - estates given by, liable to payment of debts, 357, 358.
  - estate so liable may be retained by executor until, &c., 358.
  - liability of devisees, &c., to contribute, &c., 358.
  - wills and copies of, how made evidence, 358.
  - attested copy of, devising lands, &c., to be recorded in registry of deeds, 359.
  - appointment of guardian by, 400.
  - when lost, may be established in court of chancery, 414.
- WINNEBAGO COUNTY,
  - boundaries of, 57.
  - appraisal of school lands in, 225.
- WITHHOLDING,
  - evidence of offences for reward, 703.
- WITNESSES,
  - witness against self in criminal cases, not compelled to be, 16, 20.
  - inhabitants of county competent, when county interested, 95.
  - mother of bastard child to be, 245.
  - proof of execution of deed by subscribing, 328.
  - legacies given to, when to be void, 354.
  - to a will, 353, 559.
  - proof of same by, 356.
  - to marriages, 392, 393.
  - attachment against, 453, 516.
  - justice may commit, 480.
  - when to pay costs, 480.
  - proceedings against, 487.
  - how subpœnaed, 516.
  - not obliged to attend unless fees paid or tendered, 516.
  - liability of, for failure to attend, 516.
  - taking testimony of, within this state, 516 to 518.
  - ib., out of this state, 518, 519.
  - how may be compelled to give their depositions, 518, 520, 522.
  - taking testimony of, to be perpetuated, 519 to 522.
  - taking testimony of, to be used in other states, &c., 522.

WITNESSES,
members of certain corporations not incompetent, 522.
when surety in suit, &c., how may be discharged and sworn, 522.
persons guilty of crime, not incompetent unless convicted, 522.
opposite party may be made, 523.
when party may be, in his own behalf, 523.
when shall, and when shall not be excused from answering questions, 525.
when physician, &c., not compelled to disclose, 526.
when member of corporation may be, 526.
(See *Evidence*.)
to a will, provisions concerning, 559.
their fees, 667, 674.
fees for travel in justice's court, when not to be allowed, 672.
when fees allowed for only two to each fact, 672.
to be allowed but one fee on two or more cases, 672.
how fees apportioned, 672.
poor and foreign witnesses for state, how fees paid, 678.
when to attend trial without fees being paid or tendered, 678.
when clerk of court to issue certificates of travel and attendance to, 678, 679.
WOLVES,
bounty for destruction of, 96.
WOMEN,
being aliens, &c., not to be barred of dower, 335.
(See *Females, Married Woman, Widows, Wife*.)
WOODS, FIRING,
punishment for, 697.
WORDS AND PHRASES,
rules of construction of, 59.
technical, in writs, &c., how may be expressed, 440.
(See *Definition of Words and Phrases*.)
WORSHIP,
right of, not to be infringed, 21.
religious, penalty for disturbing, 709.
WRITING,
how may be construed, 60.
conveyance of land to be in, 388.
ib., contracts for sale of lands, 388.
when leases to be in, 388.
what agreements to be in, 388, 389.
grants of existing trusts, void unless in, 390.
copied into process, not to be computed as part of draft, 678.
forging certain instruments of, 697.
uttering forged instruments of, 697.
WRITS,
style of, 31, 493.
issuing and return of, 493, 760.
who may serve, 105, 106.
what former sheriff may execute, and what to deliver to successor, 106.
when may be delivered at sheriff's office, 106.
power of supreme court to issue, 410.
judges may allow, at chambers, 410, 412.
power of circuit court and circuit judges to issue, 412, 413.
test and return of, when issued in proceedings in chancery, 415.
blank, clerks may issue to attorneys, 493.
defective service of, how remedied, 496.
how issued and returnable in county courts, 435.
what may be issued by justices, 444.
how executed, 498.
WRITS.
courts of record may devise and make, 438.
to be in the English language, and how made out, 440.
against counties, towns, &c., how served, 495.
ib., against corporations, 496.
certain, abolished, 586, 616, 639.
how issued, tested, and made returnable in circuit court, 760.
what, circuit courts may isue, 761.
Of Attachment,
in county courts, 436.
against witnesses, 453, 516.
against the property of debtors, 587 to 592.
against foreign corporations, 593.
(See *Attachment*.)
Of Capias ad respondendum, 495, 498.
(See *Capias*.)
Of Certiorari,
to justices' courts, 433, 474, 475.
ib., may issue from the supreme court, 475.
Of Error,
never to be prohibited, 21.
to county courts, 436.
in general, when and how to issue, 559.
not to stay execution, unless, &c., 559.
judge or clerk to approve bond, &c., 559.
where same to be filed, 559.
party prevailing entitled to costs, 559.
if judgment affirmed, damages to defendant in error, 559.
proceedings on, how conducted, 560.
on judgment for capital offence, 560.
in other criminal cases to issue of course, 560.
when to stay execution, 560.
how prisoner disposed of, on stay of proceedings, 560.
ten per cent damages, where judgment is affirmed, 560.
dismissal of writ not to preclude another, 560.
in proceedings for relief of insolvent debtors, 651.
costs on neglecting to prosecute, 657.
Of Habeas Corpus.
privilege of writ of, 9, 20.
to bring up person to answer for misconduct, 599.
petition for writ of, and proceedings thereon, 626 to 634.
(See *Habeas Corpus*.)
Of Injunction, 410, 412, 414, 417, 425 to 428.
(See *Injunctions*.)
Of Inquiry,
in ejectment, 568.
in replevin, 614.
notice of, to be given to adverse party, 615.
Of Mandamus and Prohibition, 413, 634, 635, 639.
(See *Mandamus*.)
Of Ne Exeat,
awarding, 412.
when and by whom granted, 425.
when discharged, 425.
Original Writ,
actions may be commenced by, 494.
Of Possession,
in ejectment, 566.
ib., after new trial, 597.
when valuable improvements have been made on real estate, 569, 570.

WRITS,
Of Replevin,
  in justices' courts, 462 to 466.
  in general, 611 to 616.
    (See *Replevin.*)
Of Restitution,
  form of, in suits for forcible entry, &c., 609.
Of Right, of Dower, of Entry and Assize,
  abolished, 586.
Of Quo Warranto and Withernam,
  abolished, 616, 639.
Of Scire Facias, 499.
Of Summons,
  issued by justices, 444, 445.
  how served, 446.
  against corporations, 466.
  issued from courts of record, how served, 495, 496.
    (See *Summons.*)
YEAR,
  political, when to commence, 36.
  definition of, 60.
  fiscal, when to commence and close, 86.
YEAS AND NAYS,
  when shall be taken in the legislature, 25.
  on the passage of what laws shall be entered, 33.